

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT H. HAMMER

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1969.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

MARTHA FUNARO, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 31st day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALBERT H. HAMMER

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Albert H. Hammer
11 Winbleton Lane
Great Neck, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

31st day of January, 1974.





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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 31st day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon B.J. SCHNEIDER, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

B.J. Schneider, C.P.A.
516 Fifth Avenue
New York, New York 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

31st day of January, 1974.

Judge A. Van Ratten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 30, 1974

Mr. Albert H. Hammer
11 Winbleton Lane
Great Neck, New York

Dear Mr. Hammer:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ALBERT H. HAMMER	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1969.	:	
	:	

Petitioner, Albert H. Hammer, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1969. (File No. 9-44258168).

A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on September 20, 1973 at 1:15 P.M. At said time and place petitioner's representative, B.J. Schneider, C.P.A., waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Albert H. Hammer's activities as a salesman during the year 1969 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Albert H. Hammer, and his wife filed a New York State income tax resident return for the year 1969. He did

not file a New York State unincorporated business tax return for said year.

2. On November 27, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Albert H. Hammer, imposing unincorporated business tax in the sum of \$516.17 upon the income received by him from his activities as a salesman during the year 1969. It also imposed additional personal income tax in the sum of \$30.33 for said year, the imposition of which is not being contested by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$632.28.

3. Petitioner, Albert H. Hammer, was a jewelry salesman during the year 1969. He sold jewelry for six firms. The items sold by him for said firms were noncompetitive. He did not maintain an office. He did not have any employees.

4. One of the firms for whom petitioner, Albert H. Hammer, sold merchandise in the year 1969 withheld Federal and New York State income taxes and social security tax from the commissions paid to him. It also covered him for workmen's compensation and health and accident insurance. His gross commissions for the year were \$28,804.39 of which \$16,000.00 were derived from the aforesaid firm. The other firms for whom he sold merchandise did not withhold the aforesaid taxes or cover him for the aforesaid types of insurance. None of the firms for whom he sold merchandise reimbursed him for any of his business expenses, which in said year totaled \$10,147.23. None of the firms exercised any

substantial control or supervision over his sales activities or techniques or over the time he devoted to sales.

CONCLUSIONS OF LAW


A. That the income received by petitioner, Albert H. Hammer, from the six firms that he represented during the year 1969 constituted income from his regular business of selling jewelry and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

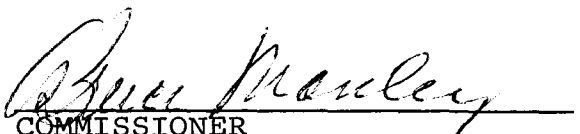
B. That the aforesaid activities of petitioner, Albert H. Hammer, during the year 1969 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Albert H. Hammer is denied and the Notice of Deficiency issued November 27, 1972, is sustained.

DATED: Albany, New York
January 31, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER