

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MILTON L. KOLBER

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(8) 23 of the :
Tax Law for the (Year(x) 1969. :

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 25th day of June , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Milton L. Kolber

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

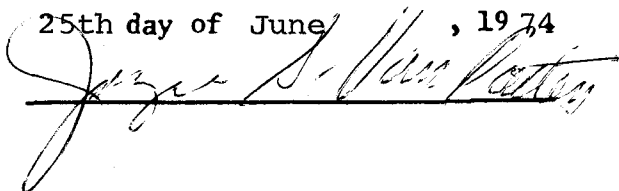
1 Dunham Road
Hartsdale, New York 10530

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

25th day of June , 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
June 25, 1974

Mr. Milton L. Kolber
1 Dunham Road
Hartsdale, New York 10530

Dear Mr. Kolber:

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

Please take further notice that pursuant to
Section ~~(9)~~ **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 S. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MILTON L. KOLBER :
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1969. :

Petitioner, Milton L. Kolber, 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. 0-58306850.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on May 16, 1974, at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

I. Did petitioner, Milton L. Kolber's activities as a toy and novelty salesman during the year 1969 constitute the carrying on of an unincorporated business?

II. Did petitioner, Milton L. Kolber's activities as a toy and novelty salesman during the year 1969 constitute the practice of a profession?

III. Did petitioner, Milton L. Kolber, have reasonable cause for failure to file a New York State unincorporated business tax return for the year 1969?

FINDINGS OF FACT

1. Petitioner, Milton L. Kolber, and his wife filed a New York State combined income tax return for the year 1969. He did not file a New York State unincorporated business tax return for said year.

2. On September 25, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Milton L. Kolber, imposing unincorporated business tax in the sum of \$254.83 upon the income received by him from his activities as a commission salesman during the year 1969. It also imposed a penalty in the sum of \$95.56 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$387.76.

3. Petitioner, Milton L. Kolber, was a toy and novelty salesman during the year 1969. He represented three firms in the sale of toys and novelties. The items sold for each firm were noncompetitive. He generally sold the products of the different firms to the same customers. He maintained an office in his home.

4. During the year 1969, the firms for whom petitioner, Milton L. Kolber, sold toys and novelties did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. They did not cover him for unemployment, disability or workmen's compensation insurance. They did not include him in their pension plans. They did not

reimburse him for any of his business expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax return. He reported his commission income as "Business Income" on his New York State resident income tax return. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities or techniques or over the time he devoted to sales.

5. Petitioner, Milton L. Kolber, was advised by his accountant that he was required to file a New York State unincorporated business tax return for the year 1969, but he chose not to follow his accountant's advice.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Milton L. Kolber, from the firms that he represented during the year 1969 constituted income from his regular business of selling toys and novelties 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 activities of petitioner, Milton L. Kolber, as a toy and novelty salesman during the year 1969 did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

C. That the aforesaid activities of petitioner, Milton L. Kolber, during the year 1969 constituted the carrying on of an

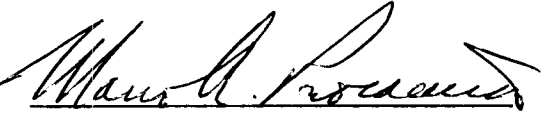
unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That petitioner, Milton L. Kolber, did not have reasonable cause for failure to file a New York State unincorporated business tax return for the year 1969 and therefore the penalty imposed pursuant to section 685(a) of the Tax Law was proper.

E. That the petition of Milton L. Kolber is denied and the Notice of Deficiency issued September 25, 1972 is sustained.

DATED: Albany, New York
June 25, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER