

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT KROSNER

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(s) 1967, 1968 :
and 1969.

State of New York
County of Albany

Janet Mack , 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 10th day of September , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert Krosner

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Robert Krosner
75 Bayberry Avenue
Garden City, 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

10th day of September , 1974

Martha Duane

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT KROSNER

:
:
:
:
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(s) 23 of the
Tax Law for the Year(s) 1967, 1968 :
and 1969.

State of New York
County of Albany

Janet Mack , 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 10th day of September , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Alvin I. Goidel,
Esq.

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

127 John Street
New York, New York 10038

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

10th day of September , 1974.

Martha J. Jura

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
~~JOHN J. SALICRAN~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
September 10, 1974

Mr. Robert Krosner
75 Bayberry Avenue
Garden City, New York

Dear Mr. Krosner:

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

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing 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

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT KROSNER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967, 1968 and 1969.	:	

Petitioner, Robert Krosner, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967, 1968 and 1969. (File No. 9-38120422).

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 March 19, 1974, at 1:15 P.M. Petitioner appeared by Alvin I. Goidel, Esq. (Hugh Helfenstein, Esq., of Counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Did petitioner, Robert Krosner's activities as a furniture salesman during the years 1967, 1968 and 1969 constitute the carrying on of an unincorporated business?

II. Did petitioner, Robert Krosner, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967, 1968 and 1969?

FINDINGS OF FACT

1. Petitioner, Robert Krosner, and his wife filed New York State income tax resident returns for the years 1967, 1968 and 1969. He did not file New York State unincorporated business tax returns for said years.

2. On August 30, 1971, the Income Tax Bureau issued a statement of Audit Changes against petitioner, Robert Krosner, imposing unincorporated business tax in the total sum of \$4,003.82 upon the income received by him from his activities as a salesman during the years 1967, 1968 and 1969. It also imposed penalties pursuant to section 685 (a) of the Tax Law in the total sum of \$1,139.88. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$5,609.08.

3. Petitioner, Robert Krosner, was a furniture salesman during the years 1967, 1968 and 1969. He represented three firms in the sale of furniture and related items. Two of the firms were affiliated companies. He generally sold the products of the different firms to the same customers. He did not have any employees.

4. During the years 1967, 1968, and 1969, the firms for whom petitioner, Robert Krosner, sold furniture and related items withheld Federal income tax and social security tax from the commissions paid to him. They did not withhold New York State income tax. They did not reimburse him for any of his business expenses. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his

sales activities and techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Robert Krosner, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1967, 1968 and 1969.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Robert Krosner, from the firms that he represented during the years 1967, 1968 and 1969 constituted income from his regular business of selling furniture and related items 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, Robert Krosner, during the years 1967, 1968 and 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 petitioner, Robert Krosner, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967, 1968 and 1969, and, therefore, the penalties imposed pursuant to section 685 (a) of the Tax Law are waived.

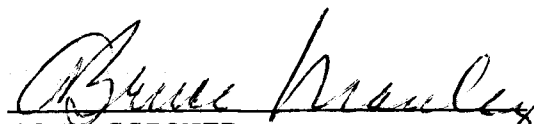
D. That the petition of Robert Krosner is granted to the extent of cancelling the penalties imposed pursuant to section 685 (a) of the Tax Law for the years 1967, 1968 and 1969 in the


total sum of \$1,139.88; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 30, 1971; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 10, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER