

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD I. KULICK

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) 1963, 1964 and:
1965.

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 20th day of May , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Edward I. Kulick

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

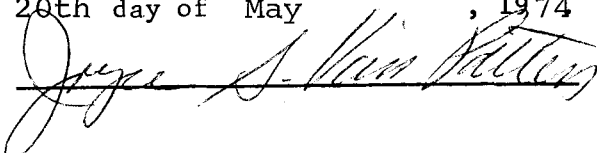
wrapper addressed as follows: Mr. Edward I. Kulick
1601 South Ocean Drive
Hollywood, Florida 33020

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

20th day of May , 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD I. KULICK

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) 1963, 1964, :
1965.

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 7th day of May , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Edward I. Kulick

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

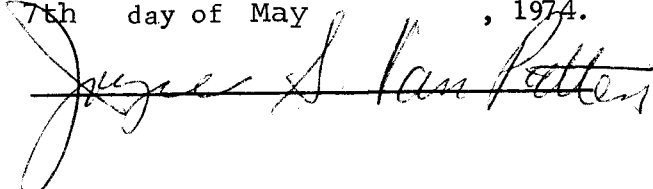
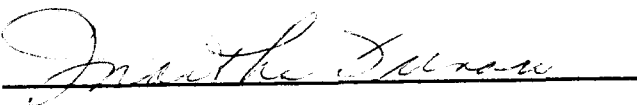
33 Vanderveer Court
Rockville Centre, New York

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

7th day of May , 1974.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD I. KULICK

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) 1963, 1964, :
1965.

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 7th day of May, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Borow & Borow

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

Borow & Borow
30 East 42nd Street
New York, New York 10017

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

7th day of May, 1974.

Martha Funaro
Judge S. Van Latten



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino
~~MILTON KOERNER, PRESIDENT~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York

May 7, 1974

**Mr. Edward I. Kulick
33 Vanderveer Court
Rockville Centre, New York**

Dear Mr. Kulick:

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,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EDWARD I. KULICK	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1963, 1964 and 1965.	:	

Petitioner, Edward I. Kulick, petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes for the years 1963, 1964 and 1965.

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 2, 1971.

Petitioner was represented by Harry Borrow, C.P.A. of Borrow & Borrow and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Did the activities of Edward I. Kulick as a sales representative for a number of handbag concerns in 1963, 1964 and 1965, constitute the carrying on of an unincorporated business under section 703 of the Tax Law?

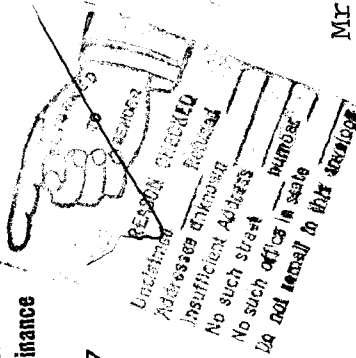
II. Was the petitioner subject to a penalty under section 685(a) of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Edward I. Kulick, timely filed New York State income tax returns, but did not file unincorporated business tax returns for the years 1963, 1964 and 1965.

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



~~Mr. Edward I. Kulick
33 Vanderveer Court
Rockville Centre, Ne~~

76 Extra 1601 1602 1603 1604 1605 1606 1607 1608 1609 1610 1611 1612 1613 1614 1615 1616 1617 1618 1619 1620 1621 1622 1623 1624 1625 1626 1627 1628 1629 1630 1631 1632 1633 1634 1635 1636 1637 1638 1639 1640 1641 1642 1643 1644 1645 1646 1647 1648 1649 1650 1651 1652 1653 1654 1655 1656 1657 1658 1659 1660 1661 1662 1663 1664 1665 1666 1667 1668 1669 1670 1671 1672 1673 1674 1675 1676 1677 1678 1679 1680 1681 1682 1683 1684 1685 1686 1687 1688 1689 1690 1691 1692 1693 1694 1695 1696 1697 1698 1699 1700 1701 1702 1703 1704 1705 1706 1707 1708 1709 1710 1711 1712 1713 1714 1715 1716 1717 1718 1719 1720 1721 1722 1723 1724 1725 1726 1727 1728 1729 1730 1731 1732 1733 1734 1735 1736 1737 1738 1739 1740 1741 1742 1743 1744 1745 1746 1747 1748 1749 1750 1751 1752 1753 1754 1755 1756 1757 1758 1759 1760 1761 1762 1763 1764 1765 1766 1767 1768 1769 1770 1771 1772 1773 1774 1775 1776 1777 1778 1779 1780 1781 1782 1783 1784 1785 1786 1787 1788 1789 1790 1791 1792 1793 1794 1795 1796 1797 1798 1799 1800 1801 1802 1803 1804 1805 1806 1807 1808 1809 1810 1811 1812 1813 1814 1815 1816 1817 1818 1819 1820 1821 1822 1823 1824 1825 1826 1827 1828 1829 1830 1831 1832 1833 1834 1835 1836 1837 1838 1839 1840 1841 1842 1843 1844 1845 1846 1847 1848 1849 1850 1851 1852 1853 1854 1855 1856 1857 1858 1859 1860 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870 1871 1872 1873 1874 1875 1876 1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418

55-3-04

2. A Notice of Determination of a Deficiency in unincorporated business tax for the years 1963, 1964 and 1965 was issued on September 25, 1967, against Edward I. Kulick under File No. 48073274. The taxpayer petitioned for a redetermination of the deficiency or for refund of unincorporated business taxes for the years 1963, 1964 and 1965.

3. Petitioner, Edward I. Kulick, was a commission salesman representing five or six handbag companies during each of the years in issue. Petitioner had one major line, several auxiliary lines and a few incidental lines or casual sales. In 1965, for example, petitioner received commissions in approximate amounts as follows:

Sterling Handbags	\$16,151.88
Lewis Purses	8,623.89
Merit	4,626.74
Another company	23.65
Another company	34.97
Another company	1,233.26

4. Petitioner had been brought into selling work as a child and had been a handbag salesman for forty-five years for various companies. Petitioner added and dropped lines over the years. Some of the main companies petitioner represented went out of business and petitioner then represented new companies. Petitioner could not represent other companies who had competitive merchandise.

5. Petitioner received monthly commission statements. The statements contained deductions for phone, post cards, and advertising. Commissions were paid only on merchandise shipped. All orders were subject to acceptance by the companies. Credit had to be approved. Allowances and discounts were between the companies and the customers.

6. Petitioner received a 20% discount for gifts of handbags which was the same discount as others working for the concerns. Petitioner had to pay 50% of the advertising charges whenever the firm had advertising contracts with customers. The customer's advertising contracts had to be approved by the companies.

7. There was no withholding of income tax or social security with any of the companies and no unemployment insurance was carried by any of the companies. With a multiline salesman there would be excessive withholding. Petitioner found it necessary to represent a number of lines because petitioner could not make enough money out of one line alone with the increased cost of traveling.

8. There was no sick leave or paid vacations. Petitioner could take vacations only when approved by the companies.

9. Petitioner had no letterhead stationery and no typewriter. Petitioner occasionally used his daughter's student typewriter. Petitioner had stationery expenses of Christmas cards and post cards to tell customers when he would be coming to their city. Petitioner, on his Federal tax return, utilized a Schedule "C" to take advertising expenses, entertainment expenses, stationery expenses, phone expenses, rent expenses for the room used in his home, and other expenses, none of which were reimbursed.

10. Petitioner's main lines had sales meetings. Wherever the petitioner was, he had to come to the sales meeting in New York and he had to come to the trade show in New York. He would be told by the sales manager, "This is the trip I want you to make." It could be a trip of three, four, or five weeks. Petitioner was required to report in every day when he was in the metropolitan area to his main company. Petitioner had no office or phone, but he always worked out of the office of the main company he represented.

11. Petitioner was required to report by mail when on the road. He had no final say as far as selling goods, credits, or allowances. If a situation came up with respect to these matters, he would discuss it with his supervisor and ask him what to do about it.

12. The territory petitioner covered was bounded by Washington, Boston, and Buffalo, and petitioner could make four or five trips a year. The companies specified the territory in which petitioner could sell and he was told to whom he could sell and to whom he could not sell.

CONCLUSIONS OF LAW

A. Petitioner was not under the direction and control of the various companies from which he sold his lines. Edward I. Kulick was not an employee, but he was an independent sales agent of the companies from which he sold his lines of handbags as an independent sales representative. He was engaged in an unincorporated business, and was subject to unincorporated business taxes during the years in issue.

B. The petition of Edward I. Kulick is denied and the determination of the deficiencies in unincorporated business taxes for the years in issue are sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
May 7, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER