

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH LAZAR and ADELINE LAZAR

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(§) 23 of the
Tax Law for the (Year(s) 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 25th day of June , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Ralph Lazar
and Adeline Lazar (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Ralph Lazar
30 Michael Road
Syosset, 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

25th day of June , 19 74

Jorge S. Laro

Jorge S. Laro, Notary

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH LAZAR and ADELINE LAZAR :

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(x) 23 of the
Tax Law for the (Year(s) 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 25th day of June , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Allan C. Cohn, Esq.

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

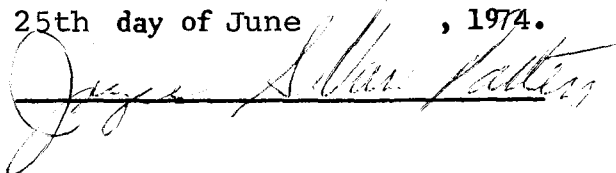
220 Old Country Road
Mineola, New York 11501

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

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

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

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

DATED: Albany, New York
June 25, 1974

Mr. and Mrs. Ralph Lazar
30 Michael Road
Syosset, New York

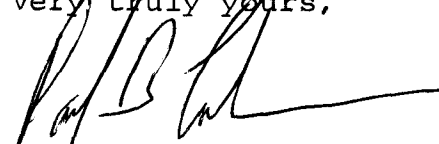
Dear Mr. and Mrs. Lazar:

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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RALPH LAZAR and ADELINE LAZAR	:	DECISION
For Redetermination of Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964 and 1965.	:	

Petitioners, Ralph Lazar and Adeline Lazar, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964 and 1965 (File No. 32078607). 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 April 19, 1974 at 10:30 A.M. Petitioners appeared by Allan C. Cohn, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Did petitioner, Ralph Lazar's selling activities during the years 1964 and 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Ralph Lazar and Adeline Lazar, filed New York State income tax resident returns for the years 1964 and 1965. Petitioner, Ralph Lazar, filed a New York State unincorporated business tax return for the year 1965, and paid a tax of \$702.06.

He did not file a New York State unincorporated business tax return for the year 1964.

2. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Ralph Lazar and Adeline Lazar, imposing unincorporated business tax upon the income received by petitioner, Ralph Lazar, from his activities as a salesman during the years 1964 and 1965. It also corrected an error in the calculation of Schedule U-C and incorporated 1965 Federal audit adjustments into the 1965 New York State unincorporated business tax return. These latter adjustments are not being contested by petitioners. It further imposed a penalty in the sum of \$151.05 for failure to file a New York State unincorporated business tax return for the year 1964. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,323.98.

3. It was stipulated at the formal hearing that petitioner, Adeline Lazar, was not subject to the New York State unincorporated business tax for the years 1964 and 1965.

4. Petitioner, Ralph Lazar, was a furniture salesman for Craft Associates, Inc. during the years 1964 and 1965. He did not sell furniture for any other firms. He did not have any employees. He used a room in his home as an office.

5. During the years 1964 and 1965, Craft Associates, Inc. did not withhold Federal or New York State income taxes or social security tax from the commissions paid to petitioner, Ralph Lazar.

They did not reimburse him of any of his business expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns. He reported his commission income as "business income" on his New York State resident income tax returns. 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 except to limit the territory in which he could sell, to forbid him to sell for other firms and to require him to spend Fridays at the New York showroom.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Ralph Lazar, from Craft Associates, Inc. during the years 1964 and 1965, constituted income from his regular business of selling furniture 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, Ralph Lazar, during the years 1964 and 1965 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, Adeline Lazar, was not subject to the unincorporated business tax for the years 1964 and 1965.

D. That the petition of Ralph Lazar and Adeline Lazar is granted to the extent of cancelling the Notice of Deficiency issued February 10, 1969, as against petitioner, Adeline Lazar, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
June 25, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER