

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL S. RUBIN

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) 1965 through :
1970.

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 4th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Samuel S. Rubin,

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

wrapper addressed as follows: Mr. Samuel S. Rubin
2020 Grand Concourse
Bronx, New York 10457

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

4th day of February, 1974.

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL S. RUBIN

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) 1965 through :
1970.

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 4th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Melvin Goldman,
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:

Melvin Goldman, C.P.A.
255 Mamaroneck Avenue
Mamaroneck, New York 10543

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

4th day of February, 1974.

Joyce S. Pankatter

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
NORMAN A. GALEMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 4, 1974

Mr. Samuel S. Rubin
2020 Grand Concourse
Bronx, New York 10457

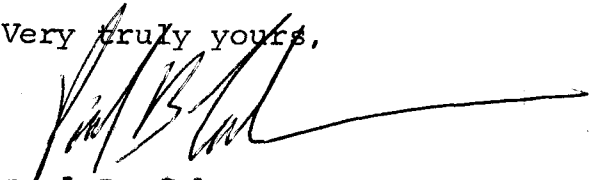
Dear Mr. Rubin:

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 Petitions	:	
	:	
of	:	
	:	
SAMUEL S. RUBIN	:	DECISION
	:	
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1965 through 1970.	:	
	:	

Petitioner, Samuel S. Rubin, has filed petitions for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965 through 1970. (File Nos. 48019801, 68070833, 8-1832744, and 0-58855400).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on October 17, 1973, at 1:15 P.M. Petitioner appeared by Melvin Goldman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq. of Counsel).

ISSUE

Did petitioner, Samuel S. Rubin's activities as an auto accessories salesman for Moto Sales Company during the years 1965 through 1970, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Samuel S. Rubin, and his wife, filed New York State combined resident income tax returns for the years 1965 through 1970. He did not file New York State unincorporated business tax returns for said years.

2. On December 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Samuel S. Rubin, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1965 and accordingly issued a Notice of Deficiency in the sum of \$44.03.

3. On February 28, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Samuel S. Rubin, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1966 and accordingly issued a Notice of Deficiency in the sum of \$134.38. On said date it issued a similar Statement of Audit Changes and Notice of Deficiency for the years 1967 and 1968 in the sum of \$627.73. On said date it further issued a similar Statement of Audit Changes and Notice of Deficiency for the years 1969 and 1970 in the sum of \$957.11.

4. Petitioner, Samuel S. Rubin, was an automobile accessory salesman during the year 1965 through 1970. He represented Moto Sales Company in the sales of automobile accessories. The company's office was in Massachusetts. He was not permitted by his principal to carry additional lines. He maintained an office

in his home. He did not have any employees. During the year 1965, he conducted his selling activities under the trade name "Ross Associates." He did not have an employment contract.

5. During the years 1965 through 1970, Moto Sales Company did not withhold Federal or New York State income taxes or social security tax from the commissions paid to petitioner, Samuel S. Rubin. It 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. Moto Sales Company 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 the metropolitan-New York area and lower Connecticut.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Samuel S. Rubin, from Moto Sales Company during the years 1965 through 1970 constituted income from his regular business of selling automobile accessories 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.

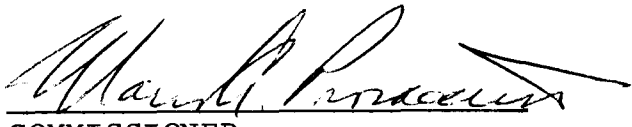
B. That the aforesaid activities of petitioner, Samuel S. Rubin, during the years 1965 through 1970 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.


C. That the State Tax Commission is not barred from nor has it waived its rights to issue a decision with reference to the years 1965 through 1970.

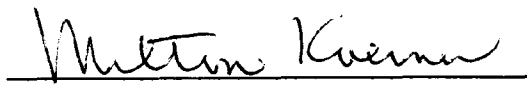
D. That the petitions of Samuel S. Rubin are denied and the Notice of Deficiency issued December 29, 1969 and the three notices of deficiency issued February 28, 1972, are sustained.

DATED: Albany, New York
February 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER