

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
SEYMOUR WIENER

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) 1968, 1969 & :  
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 30th day of October, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Seymour Wiener

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Seymour Wiener  
43-23 Colden Street  
Apt. 8K  
Flushing, New York 11355  
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

30th day of October, 1974

Janet Mack

Martha Funaro



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

**October 30, 1974**

**Mr. Seymour Wiener**  
**43-23 Colder Street**  
**Apt. 8K**  
**Flushing, New York 11355**

**Dear Mr. Wiener:**

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	:	
SEYMOUR WIENER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

---

Petitioner, Seymour Wiener, 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 1968, 1969 and 1970. (File No. 0-54325107). 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 June 18, 1974, at 9:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUES

I. Did the selling activities of petitioner, Seymour Wiener, during the years 1968, 1969 and 1970, constitute the carrying on of an unincorporated business?

II. Did petitioner, Seymour Wiener, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968, 1969 and 1970?

FINDINGS OF FACT

1. Petitioner, Seymour Wiener, and his wife filed New York State income tax resident returns for the years 1968, 1969 and 1970. He did not file New York State unincorporated business tax returns for said years.

2. On May 21, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Seymour Wiener, imposing unincorporated business tax in the total sum of \$2,626.88 upon the income received by him from his activities as a salesman during the years 1968, 1969 and 1970. It also imposed a penalty in the total sum of \$852.16 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,850.03.

3. Petitioner, Seymour Wiener, was a children's wear salesman during the years 1968, 1969 and 1970. He represented Heckler Corporation in the sale of said items during said years. He was allowed to carry a noncompetitive sideline with said company's permission although he did not do so during the years in question. He did not maintain an office. He did not have any employees.

4. Heckler Corporation did not withhold Federal or New York State income taxes or social security tax from the commissions paid to petitioner, Seymour Wiener, during the years 1968, 1969 and 1970. It did not reimburse him for his business expenses. He maintained a Keogh type pension plan. The company for whom he sold merchandise did not exercise any substantial supervision and control 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, Seymour Wiener, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1968, 1969 and 1970.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Seymour Wiener, from Heckler Corporation, during the years 1968, 1969 and 1970, constituted income from his regular business of selling children's wear 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, Seymour Wiener, during the years 1968, 1969 and 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.

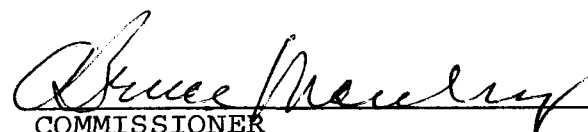
C. That petitioner, Seymour Wiener, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968, 1969 and 1970, and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

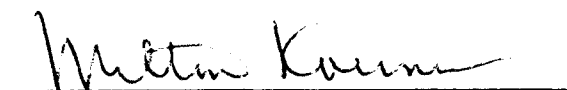
D. That the petition of Seymour Wiener is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1968, 1969 and 1970, in the total sum of \$852.16; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 21, 1973; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
October 30, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER