

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULES ZUCKER

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
1966, 1967 & 1968

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 November , 19 74, she served the within
Notice of Decision ~~(on Redetermination)~~ by ~~(certified)~~ mail upon Jules Zucker

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

4111 Seagate Avenue
Brooklyn, New York 11224

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)~~
~~(X)~~ 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 November , 1974

Janet Mack

Martha Funaro

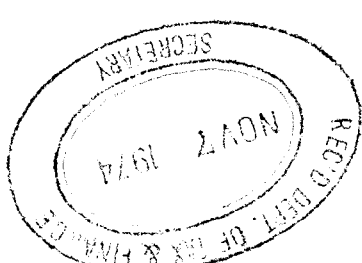
STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

Received 11/17/74

pd
Mr. Jules Zucker

Mr. Jules Zucker
4111 Seagate Avenue
Brooklyn, New York 11224



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULES ZUCKER

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 ~~(3)~~ 23 of the
Tax Law for the Year(s) 1963, 1964, 1965,
1966, 1967 & 1968.

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 4th day of November , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jules Zucker

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

4111 Seagate Avenue
Brooklyn, New York 11224

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)~~
~~XX~~ 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 November , 1974

Judge S. Van Patten

Janet Mack



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
November 4, 1974

Mr. Jules Zucker
4111 Seagata Avenue
Brooklyn, New York 11224

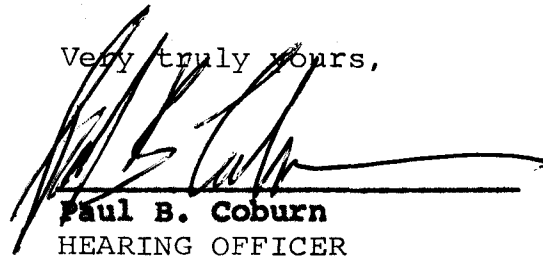
Dear Mr. Zucker:

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

Please take further notice that pursuant to
Section (8) **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	:	
JULES ZUCKER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1963, 1964, 1965, 1966,	:	
1967 and 1968.	:	

Petitioner, Jules Zucker, 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 1963, 1964, 1965, 1966, 1967 and 1968. (File Nos. 46169581 and 8-16146531.) A formal hearing was held at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on May 22, 1974, at 9:05 A.M. before Nigel G. Wright, Hearing Officer, and continued on August 15, 1974, at 1:05 P.M. before Paul B. Coburn, Hearing Officer. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., Alexander Weiss, Esq., of counsel).

ISSUE

Did petitioner, Jules Zucker's selling activities during the

years 1963 through 1968 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Jules Zucker, and his wife filed New York State income tax resident returns for the years 1963 through 1968. He did not file New York State unincorporated business tax returns for said years.

2. On April 26, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Jules Zucker, imposing unincorporated business tax in the sum of \$994.75 upon the income received by him from his activities as a salesman during the years 1963, 1964 and 1965. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,355.21.

3. On April 26, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Jules Zucker, imposing unincorporated business tax in the sum of \$643.81 upon the income received by him from his activities as a salesman during the years 1966, 1967 and 1968. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$761.17.

4. During the years 1963 through 1968, petitioner, Jules Zucker, was a sportswear salesman. He represented Peters Sportswear Co., Inc. during said years. He also represented Carlton Shirt Co., Inc. during the year 1963. The firms were unaffiliated and their respective products were noncompetitive.

5. During the year 1963, Carlton Shirt Co., Inc. withheld Federal and New York State income taxes and social security tax from the \$4,335.00 in commissions paid to petitioner, Jules Zucker. It covered him for workmen's compensation, disability and unemployment insurance. Peters Sportswear Co., Inc. did not withhold the aforesaid taxes from the \$17,885.36 in commissions paid to him. It did not cover him for the aforesaid types of insurance. He was not reimbursed for his business expenses. He deducted these expenses on Schedule "C" of his Federal income tax return. They 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.

6. During the years 1964 through 1968, Peters Sportswear Co., Inc. paid petitioner, Jules Zucker, an advance of \$200.00 per week against commissions. It deducted Federal and New York State income taxes and social security tax from said advance. Taxes were not withheld from the balance of the commissions paid to him which

were reported on a Form 1099. He requested the advance because of the large amount of his traveling and entertainment expenses. He was not reimbursed by his principal for said traveling or entertainment expenses. It covered him for workmen's compensation insurance. He was also a member of its Blue Cross plan, for which he paid the premiums. It did not exercise any substantial supervision or 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 and to prohibit him from carrying other manufacturer's lines.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Jules Zucker, from the firms that he represented during the years 1963 through 1968, constituted income from his regular business of selling sportswear 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.

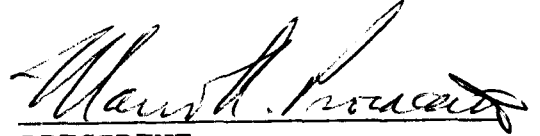
B. That the aforesaid activities of petitioner, Jules Zucker, during the years 1963 through 1968, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with

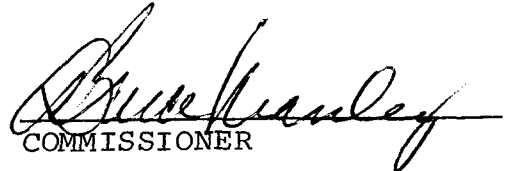
the meaning and intent of section 703 of the Tax Law.

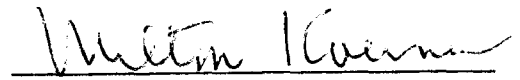
C. That the petition of Jules Zucker is denied and the notices of deficiency issued April 26, 1971, are sustained.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER