

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RAYMOND S. CAIRO

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) 1969 and 1970:

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 March , 1975 , she served the within
Notice of Decision (~~XXXXXX~~) by (certified) mail upon Raymond S. Cairo

(~~XXXXXX~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Raymond S. Cairo
2886 Riverside Drive
Wantagh, 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 (~~XXXXXX~~)
(~~XXXXXX~~) petitioner herein and that the address set forth on said wrapper is the last
known address of the (~~XXXXXX~~) petitioner.

Sworn to before me this

4th day of March , 1975.

Katherine D. Manly

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
March 4, 1975

Mr. Raymond S. Cairo
2886 Riverside Drive
Wantagh, New York

Dear Mr. Cairo:

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

Please take further notice that pursuant to
Section (3) **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: ~~XXXXXXXXXXXXXXXXXXXX~~
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RAYMOND S. CAIRO	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1969 and 1970.	:	

Petitioner, Raymond S. Cairo, 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 1969 and 1970. (File No. 0-64221170). 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 November 20, 1974, at 10:40 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, Raymond S. Cairo's selling activities during the years 1969 and 1970 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

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

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Raymond S. Cairo, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1969 and 1970 in the total sum of \$767.78. It also imposed additional personal income tax in the sum of \$47.12 for the year 1968 as a result of federal audit changes. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$910.98. The assessment of additional income tax was not contested by petitioner and was paid with interest on May 22, 1974.

3. Petitioner, Raymond S. Cairo, was a drapery salesman during the years 1969 and 1970. He sold draperies exclusively for Classic Draperies, Inc. during part of the year 1969 and part of the year 1970. Upon terminating his relationship with Classic Draperies, Inc. in 1970, he commenced selling draperies exclusively

for Wynmor Fabrics for the balance of the year and for the years 1971 and 1972. He maintained an office in his home. He did not have any employees.

4. During the years 1969 and 1970, Classic Draperies, Inc. (with the exception of \$300.00 in income on which taxes were withheld) and Wynmor Fabrics did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. They did not cover him for unemployment insurance. He was a member of their hospitalization plans but he paid his own premiums. They 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 returns. He maintained a self-employed retirement plan during the year 1970. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time that he devoted to sales.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Raymond S. Cairo, from the firms that he represented during the years 1969 and 1970. constituted income from his regular business of selling draperies

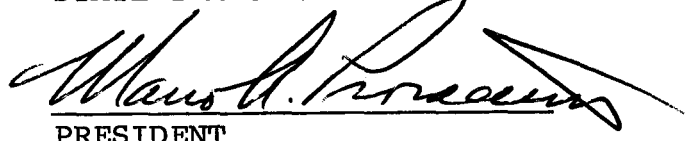
and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Raymond S. Cairo, during the years 1969 and 1970 constituted the carrying on of an unincorporated business and the income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

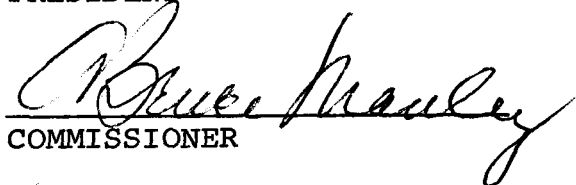
C. That the petition of Raymond S. Cairo is denied and the Notice of Deficiency issued June 20, 1972, is sustained.

DATED: Albany, New York
March 4, 1975

STATE TAX COMMISSION


MARSHALL H. FRIEDMAN

PRESIDENT


BRUCE MAULEY

COMMISSIONER


MILTON KOEHN

COMMISSIONER