

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT AND EDITH GOODMAN

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) 1967, 1968 & 1969.

State of New York
County of Albany

Katherine D. Manly, 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 14th day of March, 1975, she served the within
Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon Robert and
Edith Goodman ~~(representative of the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Robert Goodman
3482 Frederick Street
Oceanside, 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 the)~~
~~(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

14th day of March, 1975.

Janet Mack

Katherine D. Manly

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT AND EDITH GOODMAN

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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) 1967, 1968 & 1969.

State of New York
County of Albany

Katherine D. Manly , 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 14th day of March , 1975 , she served the within
Notice of Decision ~~(on Determination)~~ by (certified) mail upon Milton H.

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

99 W. Hawthorne Street
Valley Stream, New York 11580

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

14th day of March , 1975.

Janet Mack

Katherine D. Manly



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
Saul Heckelman, Acting President

~~XXXXXXXXXXXX~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York

March 14, 1975

Mr. and Mrs. Robert Goodman
3482 Frederick Street
Oceanside, New York

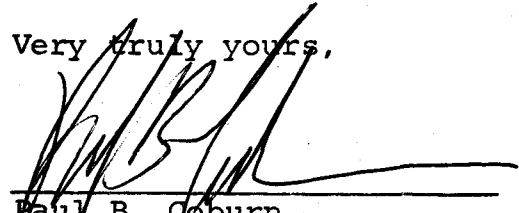
Dear Mr. and Mrs. Goodman:

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

Please take further notice that pursuant to
Section (§) 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 Petition	:	
of	:	
ROBERT GOODMAN and EDITH GOODMAN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968 and 1969.	:	

Petitioners, Robert Goodman and Edith Goodman, residing at 3482 Frederick Street, Oceanside, New York, 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 1967, 1968 and 1969. (File No. 9-34457212). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 18, 1974, at 9:15 A.M. Petitioners appeared by Milton H. Schachter, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

ISSUE

I. Did petitioner, Robert Goodman's activities as a ladies sportswear salesman during the years 1967, 1968 and 1969 constitute the carrying on of an unincorporated business?

II. Was the Notice of Deficiency dated May 24, 1971, against petitioners, Robert Goodman and Edith Goodman, barred by the statute of limitations?

FINDINGS OF FACT

1. Petitioners, Robert Goodman and Edith Goodman, filed New York State income tax resident returns for the years 1967, 1968 and 1969. He did not file New York State unincorporated business tax returns for said years.

2. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert Goodman and Edith Goodman, imposing unincorporated business tax in the sum of \$2,774.88 upon the income received by petitioner, Robert Goodman, from his activities as a salesman during the years 1967, 1968 and 1969. It also imposed penalties in the sum of \$757.68 pursuant to section 685(a) of the Tax Law for the years 1967 and 1968, and pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1969. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,825.21.

3. The Income Tax Bureau conceded at the formal hearing that petitioner, Edith Goodman, was not subject to the unincorporated business tax for the years 1967, 1968 and 1969.

4. Petitioner, Robert Goodman, was a ladies sportswear salesman during the years 1967, 1968 and 1969. He represented two firms, one in the sale of swimsuits and the other in the sale of cotton knit tops. The items sold for each firm were noncompetitive. He did not have any employees. He used one room in his home as an office.

5. During the years 1967, 1968 and 1969, the firms for whom the petitioner, Robert Goodman, sold merchandise 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 maintained a self-employed retirement plan. They did not reimburse him for any of his business expenses. He reported his commission income as "business income" on the New York State resident income tax returns. The firms 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.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Robert Goodman, from the firms that he represented during the years 1967, 1968 and 1969, constituted income from his regular business of selling ladies

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, Robert Goodman, during the years 1967, 1968 and 1969, 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, Robert Goodman, failed to file unincorporated business tax returns for the years 1967, 1968 and 1969, and, therefore, unincorporated business tax could be assessed against him at any time in accordance with the meaning and intent of section 683(c)(1)(A) of the Tax Law.

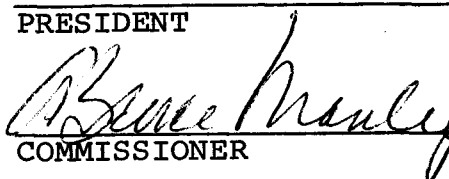
D. That the petition of Robert Goodman and Edith Goodman is granted to the extent of cancelling the Notice of Deficiency issued May 24, 1971, as against petitioner, Edith Goodman, and that except as so granted, the petition is in all other respects denied, and the aforesaid Notice of Deficiency as against petitioner, Robert Goodman, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

March 14, 1975

PRESIDENT


COMMISSIONER


COMMISSIONER

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