

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD W. GORDON

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 (x) 23 of the  
Tax Law for the Year(s) 1966 and 1967;

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 29th day of January, 1975, she served the within

Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon HAROLD W. GORDON

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Harold W. Gordon

240 East 79th Street

New York, New York 10021

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)~~  
~~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

29th day of January, 1975.

Katherine D. Mauley

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD W. GORDON

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 (x) 23 of the  
Tax Law for the Year(s) 1966 and 1967;

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 29th day of January, 1975, she served the within  
Notice of Decision (~~xxxRedetermination~~) by (certified) mail upon ALLAN ASH, 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: Allan Ash, C.P.A.  
122 East 42nd Street  
New York, New York 10017

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

29th day of January, 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
**January 29, 1973**

**Mr. Harold W. Gordon**  
**240 East 79th Street**  
**New York, New York 10021**

**Dear Mr. Gordon:**

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

Please take further notice that pursuant to  
Section ~~100~~ **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

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In the Matter of the Petition	:	
of	:	
HAROLD W. GORDON	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	

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Petitioner, Harold W. Gordon, 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 1966 and 1967. (File No. 74657504). 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 18, 1974, at 1:50 P.M. Petitioner appeared by Allan Ash, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUES

I. Did the selling activities of petitioner, Harold W. Gordon, during the years 1966 and 1967, constitute the carrying on of an unincorporated business?

II. Did petitioner, Harold W. Gordon, have reasonable cause for not filing New York State unincorporated business tax returns for the years 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Harold W. Gordon, filed New York State income tax resident returns for the years 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On February 24, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Harold W. Gordon, imposing unincorporated business tax in the sum of \$1,803.24 upon the income received by him from his activities as a salesman during the years 1966 and 1967. It also imposed a penalty pursuant to section 685 (a) of the Tax Law in the sum of \$450.81 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 \$2,502.98.

3. During the years 1966 and 1967, petitioner, Harold W. Gordon, was a ladies' coat and suit salesman. The firms that he represented and the amounts of his gross commission income were as follows:

<u>1966</u>		<u>Amount of Gross</u> <u>Commissions</u>
<u>Name of Principal</u>		
Modern Deb, Inc.		\$ 9,895.87
Jolee, Incorporated		14,121.53
M. J. Levine, Inc.		3,749.13
Fairmoor		12,141.95
Regency		3,855.00
Regal		<u>8,500.00</u>
	TOTAL	\$52,263.48
<u>1967</u>		
Modern Deb, Inc.		\$14,970.46
Jolee, Incorporated		11,897.14
M. J. Levine, Inc.		3,830.68
Fairmoor		14,567.72
Regal		<u>10,047.19</u>
	TOTAL	\$55,313.19

Jolee, Incorporated and M. J. Levine, Inc. were affiliated firms. Regency and Regal were also affiliated firms. The items sold by him for each firm were noncompetitive. He did not have any employees.

4. During the years 1966 and 1967, the firms for whom petitioner, Harold W. Gordon, 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 workmen's compensation, unemployment or disability insurance. He participated in one of the firms health insurance plans, but paid his own premiums. He was not a member of any of their pension plans. He was not reimbursed for any of his business expenses, which expenses amounted to approximately one-third of his commission income. He deducted his business expenses from his gross commission on Schedule "C" of his Federal income tax returns. He did not receive any paid vacations. 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 he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Harold W. Gordon, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1966 and 1967.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Harold W. Gordon, from the firms that he represented during the years 1966 and 1967, constituted income from his regular business of selling ladies'

coats and suits 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, Harold W. Gordon, during the years 1966 and 1967, 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, Harold W. Gordon, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1966 and 1967, and, therefore, the penalty assessed pursuant to section 685 (a) of the Tax Law is waived.

D. That the petition of Harold W. Gordon, is granted to the extent of cancelling the penalty imposed pursuant to section 685 (a) of the Tax Law for the years 1966 and 1967, in the total sum of \$450.81; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 24, 1970; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
January 29, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER