

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GORDON HUNT and ADELE HUNT

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) 1968, 1969 & :
1970.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

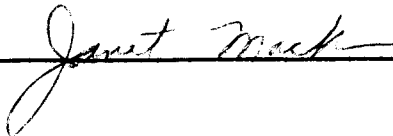
State of New York
County of Albany

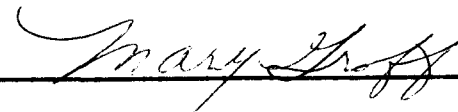
MARY GROFF, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of December, 1975, she served the within
Notice of Decision (~~xx Determination~~) by (certified) mail upon GORDON HUNT and
ADELE HUNT (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Gordon Hunt
36 Hartford Avenue
Madison, Connecticut 06443
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~~
~~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

30th day of December, 1975





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GORDON HUNT and ADELE HUNT

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.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

MARY GROFF, 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 December, 1975, she served the within
Notice of Decision ~~for Redetermination~~ by (certified) mail upon LEON N. WEISS, 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:

Leon N. Weiss, C.P.A.
271 North Avenue
New Rochelle, New York 10801

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 December, 1975

Just Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

DATED: Albany, New York
December 30, 1975

ADDRESS YOUR REPLY TO
Mr. Wright
Mr. Leisner
Mr. Coburn
(518) 457-3850

Mr. and Mrs. Gordon Hunt
36 Hartford Avenue
Madison, Connecticut 06443

Dear Mr. and Mrs. Hunt:

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

Please take further notice that pursuant to
Section (x) **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	:	
GORDON HUNT and ADELE HUNT	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

Petitioners, Gordon Hunt and Adele Hunt, residing at 36 Hartford Avenue, Madison, Connecticut, 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 1968, 1969 and 1970. (File No. 0-66576160). 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 February 25, 1975, at 1:15 P.M. Petitioners appeared by Leon N. Weiss, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

ISSUES

I. Did petitioner, Gordon Hunt's activities as a sportswear salesman during the years 1968, 1969 and 1970 constitute the carrying on of an unincorporated business?

II. Did petitioner, Gordon Hunt, have reasonable cause for failing to file unincorporated business tax returns for the years 1968, 1969 and 1970?

III. What portion of petitioners, Gordon Hunt and Adele Hunt's personal income for the years 1968, 1969 and 1970 constituted salary income earned by petitioner, Adele Hunt.

FINDINGS OF FACT

1. Petitioners, Gordon Hunt and Adele Hunt, filed New York State income tax resident returns for the years 1968, 1969 and 1970. They 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 petitioners, Gordon Hunt and Adele Hunt, imposing unincorporated business tax upon petitioner, Gordon Hunt's income as a salesman during the years 1968, 1969 and 1970 in the total sum of \$1,036.24. It also imposed a penalty pursuant to former section 685(a) of the Tax Law in the sum of \$26.37 for the year 1968 and penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law in the total sum of \$351.93 for the years 1969 and 1970.

3. Petitioner, Gordon Hunt, was a sportswear salesman during the years 1968, 1969 and 1970. He represented five unaffiliated firms during the year 1968, three unaffiliated firms during the

year 1969 and four unaffiliated firms during the year 1970. His gross commission income for the year 1968 was \$21,784.91 of which \$15,478.58 was received from E.S. Deans and Co., Inc. His gross commission income for the year 1969 was \$27,724.29 of which \$18,884.23 was received from E.S. Deans and Co., Inc. The company reported \$4,909.33 of said sum on a W-2 form. His gross commission income for the year 1970 was \$29,225.35 of which \$13,945.24 was received from E.S. Deans and Co., Inc. The company reported \$6,566.00 of said sum on a W-2 form. The items sold for each firm were non-competitive. They were sold to basically the same customers, although some of the merchandise was sold during different seasons. He did not have any employees. He maintained an office in his home. He reported his commission income, other than that received on W-2 forms, on schedule "C"s.

4. During the years 1968, 1969 and 1970 all of the firms for whom petitioner, Gordon Hunt, sold merchandise, except E.S. Deans and Co., Inc., 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, workmen's compensation, disability or medical insurance. It was stipulated at the formal hearing that he was not an employee of these firms. He was free to work for or represent any principals that he desired.

5. During the years 1968, 1969 and 1970 the firms for whom petitioner, Gordon Hunt, sold merchandise did not reimburse him for any of his business expenses. They generally required him to purchase samples. They did not exercise any substantial control or supervision over his sales activities and techniques or over the time that he devoted to sales, except to limit the territory in which he could sell.

6. Petitioner, Gordon Hunt, 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.

7. In 1970, petitioner, Adele Hunt, earned \$206.00 as an employee of Outdoor Traders, Inc. She failed to submit any documentary or other substantial evidence to prove her claim that she earned \$371.69 in 1968 and \$349.33 in 1969 from said company.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Gordon Hunt, from the firms that he represented during the years 1968, 1969 and 1970 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, Gordon Hunt, during the years 1968, 1969 and 1970 constituted the carrying on

of an unincorporated business and his income derived therefrom, including his income from E.S. Deans and Co., Inc., was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Gordon Hunt, 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 former section 685(a) of the Tax Law for the year 1968 and the penalties assessed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1969 and 1970 are waived.

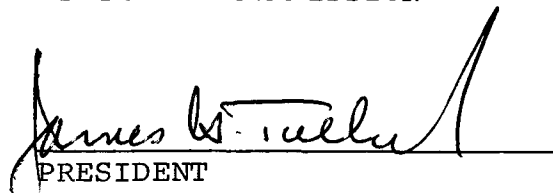
D. That the Income Tax Bureau incorrectly included in the base for the computation of petitioner, Gordon Hunt's unincorporated business income for the year 1970 the sum of \$206.00 earned by petitioner Adele Hunt as an employee of Outdoor Traders, Inc.

E. That the petition of Gordon Hunt and Adele Hunt is granted to the extent of cancelling the penalty imposed in the sum of \$26.37 for the year 1968 and the penalties imposed in the sum of \$351.93 for the years 1969 and 1970, and of reducing taxable business income for the year 1970 from \$8,996.92 to \$8,790.92 and of reducing

unincorporated business tax due for said year from \$494.83 to \$483.50,
and that except as so granted, the petition is in all other respects
denied.

DATED: Albany, New York
December 30, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER