

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MOE MEYER

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 (8) 23 of the
Tax Law for the Year(s) 1968, 1969, :
1970 and 1971

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 17th day of December, 1975, she served the within
Notice of Decision (~~on determination~~) by (certified) mail upon Moe Meyer

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Moe Meyer
2320 Sunset Avenue
Utica, New York 13502

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

17th day of December, 1975.

Mary Tracy

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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Tax Law for the Year(s) 1968, 1969, :
1970 and 1971

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 17th day of December , 19 75, she served the within
Notice of Decision (~~on December 17, 1975~~) by (certified) mail upon Daniel S. Cohen, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Daniel S. Cohen, Esq.
First National Bank Building
Room 1200
185 Genesee Street
Utica, New York 13501
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

17th day of December , 1975

[Signature]

[Signature: Janet Mack]



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-~~XXX~~
3850

DATED: Albany, New York
December 17, 1975

Mr. Moe Meyer
2320 Sunset Avenue
Utica, New York 13502

Dear Mr. Meyer:

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,

L. Robert Leisner
L. ROBERT LEISNER

Enc.

HEARING OFFICER

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	:	
MOE MEYER	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1969, 1970 and 1971.	:	

Petitioner, Moe Meyer, 2320 Sunset Avenue, Utica, New York 13502, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1969, 1970 and 1971.

A formal hearing was held at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on June 17, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Rossi, Cohen & Durso, P.C., (Daniel S. Cohen, Esq. of counsel), and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

ISSUE

Whether petitioner, Moe Meyer, was carrying on an unincorporated business during the years 1968, 1969, 1970 and 1971?

FINDINGS OF FACT

1. Petitioner, Moe Meyer, timely filed New York State income tax returns for the years 1968, 1969, 1970 and 1971. He did not

file New York State unincorporated business tax returns for the period in issue.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1968, 1969, 1970 and 1971 was issued on February 26, 1973, against the taxpayer on File No. 1-78700245.

3. The taxpayer petitioned for a redetermination of the deficiencies.

4. Petitioner, Moe Meyer, co-found Utica Merchandise and Paper Company in 1932 with his brother. In 1946 he sold his stockholdings in the company to his brother's son and son-in-law. Petitioner, Moe Meyer, remained with the company after 1946.

5. Since 1946, petitioner, Moe Meyer, has received a weekly salary from the company. Federal and state withholding taxes and social security are taken from his weekly pay check. The company has paid payroll taxes on his earnings, including social security, workmen's compensation and New York State disability and unemployment insurance. Petitioner, Moe Meyer, was not a member of the company's pension plan because he was over 65 at its inception.

6. In addition to his flat salary petitioner, Moe Meyer, receives from Utica Merchandise and Paper Company, Inc. a bonus for his work as a salesman for the company. He has about seventy customers in the central and southern part of New York State who he calls on at regular intervals. All orders that petitioner,

Moe Meyer, takes must be approved by the company. He shares a desk at the company's place of business with other salesmen.

7. Since the early 1960's petitioner has also done sales work for Millen Industries, Inc. The latter solicited his services and petitioner requested approval from Utica Merchandise and Paper Company, Inc. before he consented to work for Millen Industries, Inc. Millen Industries, Inc. authorized the accounts which petitioner serviced. Petitioner, Moe Meyer, was paid on a commission basis and had about ten accounts. He does not have an office at Millen Industries, Inc. and he communicates with them by mail or phone.

8. Petitioner, Moe Meyer, does not have any employees nor does he maintain an office. Under the conditions of employment for both companies, he pays his own travel expenses.

CONCLUSIONS OF LAW

A. That petitioner is an employee of Utica Merchandise and Paper Company, Inc.

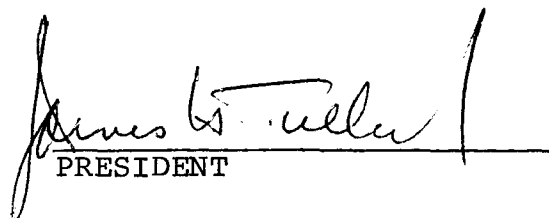
B. That petitioner is an independent sales agent with respect to Millen Industries, Inc. and that his activities constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

C. The deficiency as modified is sustained and the taxpayer's petition is denied.

D. The deficiency or refund shall be recomputed in accord with this decision.

DATED: Albany, New York
December 17, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER