



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
JAMES H. TULLY, JR.  
~~MAJOR A. COSSACK~~ 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  
July 15, 1975

Mr. & Mrs. Julius Pine  
282 Marion Street  
Danbury, Connecticut

Dear Mr. & Mrs. Pine:

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

Please take further notice that pursuant to  
Section (a) **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: ~~Rebutione de Representadon~~  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

---

|                                       |   |          |
|---------------------------------------|---|----------|
| In the Matter of the Petition         | : |          |
| of                                    | : |          |
| JULIUS PINE and PEARL PINE            | : | DECISION |
| for Redetermination of Deficiency or  | : |          |
| for Refund of Unincorporated Business | : |          |
| Tax under Article 23 of the Tax Law   | : |          |
| for the Year 1970.                    | : |          |

---

Petitioners, Julius Pine and Pearl Pine, residing at 282 Marion Street, Danbury, 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 year 1970. File No. 0-58844959. 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 May 21, 1975, at 2:30 P.M. Petitioner, Julius Pine, appeared pro se and for his wife, petitioner, Pearl Pine. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

ISSUE

Did petitioner, Julius Pine's activities as a ladies wear salesman during the year 1970 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Julius Pine and Pearl Pine, filed a New York State income tax resident return for the year 1970. They did not file a New York State unincorporated business tax return for said year.

2. On December 18, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Julius Pine and Pearl Pine, imposing unincorporated business tax in the sum of \$829.27 upon the income received by petitioner, Julius Pine from his activities as a salesman during the year 1970. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against them in the sum of \$912.60.

3. It was stipulated at the formal hearing that petitioner, Pearl Pine, was not engaged in an unincorporated business during the year 1970 and that the Notice of Deficiency should be cancelled as against her.

4. Petitioner, Julius Pine, was a ladies wear salesman during the year 1970. He represented three unaffiliated firms in the sale of said merchandise. The items sold for each firm were noncompetitive. They were sold to basically the same customers. He did not have any employees.

5. During the year 1970, the firms for whom petitioner, Julius Pine, sold ladies wear 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. They did not reimburse him for his business expenses. He maintained a self-employed retirement fund. The firms for whom he sold merchandise did not exercise any substantial control or supervision 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, Julius Pine, from the firms that he represented during the year 1970 constituted income from his regular business of selling ladies wear 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, Julius Pine, during the year 1970 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.

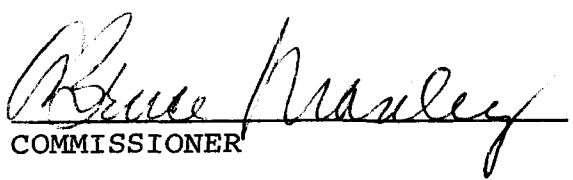
C. That the petition of Julius Pine and Pearl Pine is granted to the extent of cancelling the Notice of Deficiency dated December 18, 1972, as against petitioner, Pearl Pine; that the Income Tax Bureau is hereby directed to accordingly modify said Notice of Deficiency, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
July 15, 1975

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER