

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD ROTHBERGER

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business :  
Taxes under Article ~~(x)~~ 23 of the  
Tax Law for the Year ~~(x)~~ 1970. :

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

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 28th day of May, 1975, she served the within  
Notice of Decision ~~(for Determination of)~~ by (certified) mail upon BERNARD ROTHBERGER

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

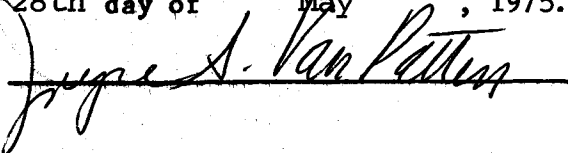
Mr. Bernard Rothberger  
150-08 78th Avenue  
Flushing, New York 11367

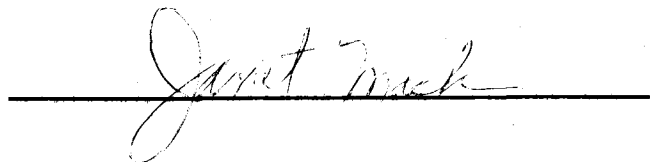
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~(x)~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

28th day of May, 1975.







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.~~  
~~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  
**May 28, 1975**

**Mr. Bernard Rothberger**  
**150-08 78th Avenue**  
**Flushing, New York 11367**

**Dear Mr. Rothberger:**

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: ~~Section Chief, Compliance~~  
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	:	
BERNARD ROTHBERGER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1970.	:	

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Petitioner, Bernard Rothberger, residing at 150-08 78th Avenue, Flushing, New York 11367, has 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. O-68313200) 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 March 19, 1975, at 11:10 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Did petitioner, Bernard Rothberger's selling activities during the year 1970 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Bernard Rothberger, and his wife filed a New York State combined income tax return for the year 1970. He did not file a New York State unincorporated business tax return for said year.

2. On November 27, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Bernard Rothberger, imposing unincorporated business tax upon the income received by him 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 in the sum of \$220.98.

3. During the year 1970, petitioner, Bernard Rothberger, was a ladies sportswear salesman. He represented two unaffiliated firms in the sale of said items. The products sold by him for said firms were noncompetitive and were sold to basically the same customers. He did not have any employees. He maintained an office in the basement of his home.

4. During the year 1970, one of the firms for whom he sold merchandise withheld Federal and New York State income taxes and social security tax from the commissions paid to him. It covered him for unemployment, workmen's compensation and health insurance. The other firm for whom he sold merchandise did not withhold the aforesaid taxes from the commissions paid to him or cover him for the aforesaid types of insurance. He was not reimbursed for any of his business expenses. He deducted his business expenses from

his gross commissions on his Federal income tax return. 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, Bernard Rothberger, from the firms that he represented during the year 1970 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, Bernard Rothberger, 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 Bernard Rothberger is denied and the Notice of Deficiency issued November 27, 1972, is sustained.

DATED: Albany, New York  
May 28, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER