

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD TENENBAUM

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(s) 23 of the
Tax Law for the Year(s) 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 28th day of January, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon Gerald Tenenbaum

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Gerald Tenenbaum
20 Stuart Drive
Syosset, New York

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)~~
~~the~~ 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

28th day of January, 1975

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD TENENBAUM

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article ~~(3)~~ 23 of the
Tax Law for the Year ~~(s)~~ 1967

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 January, 1975, she served the within
Notice of Decision (~~of Redetermination~~) by (certified) mail upon Milton Schachter, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Milton Schachter, Esq.
99 West Hawthorne Avenue
Valley Stream, New York

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

28th day of January, 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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

ADDRESS YOUR REPLY TO

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

DATED: Albany, New York
January 28, 1975

Mr. Gerald Tenenbaum
20 Stuart Drive
Syosset, New York

Dear Mr. Tenenbaum:

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 S. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

Petitioner, Gerald Tenenbaum, 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 1967. (File No. 76801635). 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 October 21, 1974, at 3:20 P.M. Petitioner appeared by Milton Schachter, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

II. Did petitioner, Gerald Tenanbaum, have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1967?

FINDINGS OF FACT

1. Petitioner, Gerald Tenenbaum, filed a New York State income tax resident return for the year 1967. He did not file a New York State unincorporated business tax return for said year.

2. On May 15, 1969, the Income Tax Bureau issued a Statement of Audit Changes, against petitioner, Gerald Tenenbaum, imposing unincorporated business tax in the sum of \$1,181.63, upon the income received by him from his activities as a salesman during the year 1967. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$295.41 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,633.37.

3. During the year 1967, petitioner, Gerald Tenenbaum, was a ladies' sportswear salesman. He represented two unaffiliated firms in the sale of said items. The products sold by him for each firm were noncompetitive. He did not have any employees.

4. During the year 1967, the firms for whom petitioner, Gerald Tenenbaum, sold merchandise withheld Federal and New York State income taxes and social security tax from the commissions paid to him. They covered him for workmen's compensation, unemployment and disability 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. He maintained a self-employed retirement plan. The firms for whom he sold merchandise did not exercise any substantial supervision and control over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Gerald Tenenbaum, was advised by his accountant that he was not required to file a New York State unincorporated business tax return for the year 1967.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Gerald Tenenbaum, from the firms that he represented during the year 1967, 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.

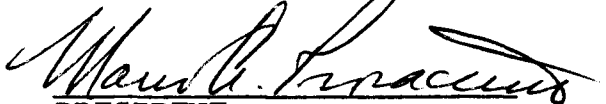
B. That the aforesaid activities of petitioner, Gerald Tenenbaum, during the year 1967, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Gerald Tenenbaum, had reasonable cause for not filing a New York State unincorporated business tax return for the year 1967, and, therefore the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

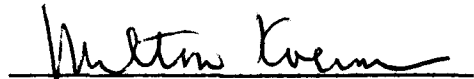
D. That the petition of Gerald Tenenbaum is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1967 in the sum of \$295.41; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 15, 1969; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 28, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER