

TAB

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
LAWRENCE E. WHITE	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law	:	
for the Years 1970 and 1971.	:	

---

Petitioner, Lawrence E. White, residing at 215 East 68th Street, New York, New York 10021, has filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1970 and 1971. (File No. 1-75893316.) 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 April 24, 1975, at 9:15 A.M. Petitioner appeared by Sheldon Basch, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel).

ISSUES

I. Did the selling activities of petitioner, Lawrence E. White, during the years 1970 and 1971 constitute the carrying on of an unincorporated business.

II. Did petitioner, Lawrence E. White, have reasonable cause for failing to file New York State unincorporated business tax

returns and timely pay New York State unincorporated business tax for the years 1970 and 1971.

FINDINGS OF FACT

1. Petitioner, Lawrence E. White, filed New York State income tax resident returns for the years 1970 and 1971. He did not file New York State unincorporated business tax returns for said years.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Lawrence E. White, imposing unincorporated business tax in the sum of \$332.29 upon the income received by him from his activities as a salesman during the years 1970 and 1971. It also imposed penalties in the sum of \$100.25 pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law. It further imposed additional personal income tax for the year 1971 in the sum of \$6.98, which assessment is not being contested by petitioner. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$464.31.

3. Petitioner, Lawrence E. White, was a dress salesman during the years 1970 and 1971. He represented three unaffiliated firms in the sale of dresses. Sales for one of the firms generated in excess of 80% of his gross commission income. The items sold for each firm were noncompetitive. He generally sold the products of the different firms to the same customers. He did not have any employees. He did not maintain an office.

4. During the years 1970 and 1971 the firms for whom petitioner, Lawrence E. White, sold dresses 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 or workmen's

compensation insurance. They did not reimburse him for any of his business expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns. He reported his commission income as "Business Income" on his New York State income tax returns. He maintained a self-employed individual retirement plan. 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 that he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Lawrence E. White, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1970 and 1971.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Lawrence E. White, from the firms that he represented during the years 1970 and 1971 constituted income from his regular business of selling women's dresses 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, Lawrence E. White, during the years 1970 and 1971 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.

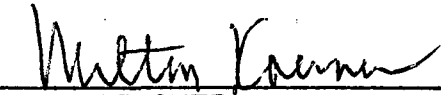
C. That petitioner, Lawrence E. White, had reasonable cause for failing to file New York State unincorporated business tax returns and timely pay New York State unincorporated business tax for the years 1970 and 1971, and, therefore, the penalties assessed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are waived.

D. That the petition of Lawrence E. White is granted to the extent of cancelling the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1970 and 1971 in the sum of \$100.25; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 26, 1973, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
December 29, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER