

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ELIAS & EVELYN ZAVIN

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) 1969.

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

State of New York  
County of Albany

MARY GROFF

, 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 9th day of October , 19 75 , she served the within

Notice of Decision ~~(for Determination)~~ by (certified) mail upon ELIAS & EVELYN ZAVIN

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. & Mrs. Elias Zavin  
155 East 34th Street  
New York, New York 10016

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 the)~~ petitioner.

Sworn to before me this

9th day of October , 19 75

Janet Mack

Mary Groff

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ELIAS & EVELYN ZAVIN

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)~~ 1969.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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State of New York  
County of Albany

MARY GROFF

, 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 9th day of October , 1975 , she served the within  
Notice of Decision (~~XXXXXXXXXXXXXX~~) by (certified) mail upon CHARLES RICHTER

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Charles Richter  
1430 East 88th Street  
Brooklyn, New York 11236

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

9th day of October , 1975.

Janet Mack

Mary Groff



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

~~GEORGE S. CONNELL~~

BUILDING 9, ROOM ~~100X~~ 107

STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Coburn  
Mr. Leisner  
(518) 457-3336

DATED:

Albany, New York  
October 9, 1975

Mr. & Mrs. Elias Zavin  
155 East 34th Street  
New York, New York 10016

Dear Mr. & Mrs. Zavin:

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

Please take further notice that pursuant to  
Section **(E) 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,

**NIGEL G. WRIGHT**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ELIAS and EVELYN ZAVIN	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1969.	:	

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Elias and Evelyn Zavín, 155 East 34th Street, New York, New York 10016, filed a petition under sections 689 and 722 of the Tax Law for the redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the year 1969.

Said deficiency was asserted by notice issued December 27, 1971, under file number 9-34242456 and is in the amount of \$886.53 plus interest of \$90.40 for a total of \$976.93.

A hearing was duly held on April 10, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G Wright, Hearing Officer. The petitioners were represented by Charles Richter. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by James A. Scott, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether Mr. Zavín, an outside commission salesman, is an employee and exempt from unincorporated business tax or whether he is an independent contractor subject to tax.

FINDINGS OF FACT

1. Petitioners resided during the year in question at 155 East 34th Street, New York City.

2. Mrs. Evelyn Zavín is not involved in her husband's activities as a commission salesman.

3. Mr. Zavín represented two manufacturers of sportswear: Robert Sportswear of 94 Fulton Street, Patterson, New Jersey, which makes boys' suits and Passaic Sportswear Co., Inc. of 189-191 Monroe Street, Passaic, New Jersey, which make leather coats. Robert Sportswear was his main principal. His income from Passaic was never more than \$1000 in any year and that was derived from orders received from only two or three accounts.

4. Mr. Zavín had an office at 350 Fifth Avenue, New York City. He had his own letterhead which did not name any manufacturer. He had a telephone answering service. He solicited orders in the Metropolitan New York area.

5. Mr. Zavín incurred expenses of about one-third of his gross commissions. He was not reimbursed for these expenses.

6. Mr. Zavin paid his own self-employment tax during the year in question.

7. Mr. Zavin has admitted that Passaic did not wish to hire him as an employee because of the expenses of employee benefits that would be incurred.

CONCLUSIONS OF LAW

Mr. Zavin is an independent contractor and is liable for unincorporated business tax. His wife is not liable for said tax and as to her, the deficiency is cancelled.

The deficiency with respect to Mr. Zavin only is correct and is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
October 9, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER