

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT D. EDELSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1964 through 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 18th day of November , 1976 , she served the within
Notice of Decision by (certified) mail upon Robert D. Edelstein

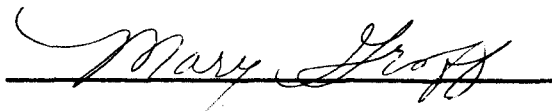
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Robert D. Edelstein
645 Lakeview Avenue
Rockville Centre, New York 11570

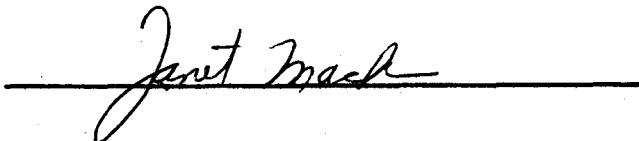
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

18th day of November , 19 76





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT D. EDELSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(x) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1964 through 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 18th day of November , 1976 , she served the within
Notice of Decision by (certified) mail upon Paul Horkimer
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Paul Horkimer
1155 Montauk Highway
East Patchogue, NY 11772
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 Postal Service 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

18th day of November , 1976.

Mary Groff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 18, 1976

TELEPHONE: (518) **457-3850**

Mr. Robert D. Edelstein
645 Lakeview Avenue
Rockville Centre, New York 11570

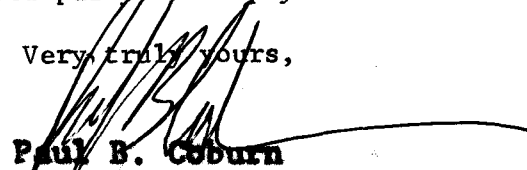
Dear Mr. Edelstein:

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

Please take further notice that pursuant to
Section(**3**) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT D. EDELSTEIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years	:	
1964 through 1967	:	

Petitioner, Robert D. Edelstein, residing at 645 Lakeview Avenue, Rockville Centre, New York 11570, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964 through 1967. (File No. 00533).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1976, at 11:15 A.M. Petitioner appeared by his representative, Mr. Paul Horkimer. The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUES

I. Whether petitioner, Robert D. Edelstein's sales activities during the years 1964 through 1967 constituted the carrying on of an unincorporated business.

II. Whether the Income Tax Bureau timely assessed petitioner, Robert D. Edelstein, for unincorporated business tax due for the years 1964 through 1967.

FINDINGS OF FACT

1. Petitioner, Robert D. Edelstein and his wife, Clare M. Edelstein, filed New York State personal income tax returns for the years 1964 through 1967. Petitioner, Robert D. Edelstein, failed to file New York State unincorporated business tax returns for said years.

2. On October 28, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert D. Edelstein, for unincorporated business tax due from the income derived from his activities as a salesman during the years 1964 through 1967. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued for \$2,047.00, plus interest of \$997.70, for a sum total of \$3,044.70.

3. During the years 1964 through 1966, petitioner, Robert D. Edelstein, was a salesman for Playland Industries and Hi-Line Co., Inc. In 1967 petitioner worked for Pandora Sportswear in the same capacity. Petitioner sold children's wearing apparel for said firms.

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4. Petitioner, Robert D. Edelstein, was restricted by the firm to a specified territory and to a specified price for selling his merchandise. Only the companies could extend credit to his customers. All orders taken by petitioner were subject to acceptance by the firms.

5. Petitioner, Robert D. Edelstein, had a paneled room in the basement of his home in which room was his desk, typewriter and records.

6. Petitioner, Robert D. Edelstein, was paid on a straight commission basis. Petitioner had no social security, state or federal income taxes withheld from his remuneration. He was not reimbursed for his expenses while he was traveling on company business. Petitioner took said expenses as itemized deductions on his income tax returns during the years in issue. The firms for whom he sold merchandise did not exercise substantial supervision and control over his sales activities and techniques or over the time that he devoted to sales.

7. Petitioner, Robert D. Edelstein, alleged that the Income Tax Bureau did not timely issue an assessment for unincorporated business tax due for the years 1964 through 1967.

CONCLUSIONS OF LAW

A. That petitioner, Robert D. Edelstein, was an independent sales representative, selling merchandise for Playland Industries, Hi-Line Co., Inc. and Pandora Sportswear during the years 1964 through 1967. Said firms did not exert sufficient control over petitioner's sales activities to permit the designation of petitioner as an employee

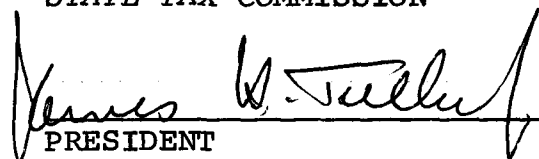
within the meaning and intent of section 703(b) of the Tax Law. Therefore, petitioner's sales activities were subject to the unincorporated business tax in the years 1964 through 1967 within the meaning and intent of section 703 of the Tax Law.

B. That section 683(c)(1)(A) of the Tax Law, as made applicable to the unincorporated business tax by section 722 of the Tax Law, states that the tax may be assessed at any time if no return is filed. Petitioner, Robert D. Edelstein, filed no unincorporated business tax returns for the years in question. The Income Tax Bureau is, therefore, not precluded from assessing petitioner for unpaid unincorporated business tax for the years 1964 through 1967 in accordance with the meaning and intent of section 683(c)(1)(A) and section 722 of the Tax Law.

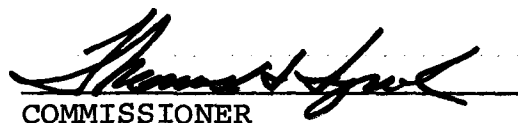
C. That the petition of Robert D. Edelstein is denied and the Notice of Deficiency issued October 28, 1974 is sustained.

DATED: Albany, New York
November 18, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

1. The following information is being furnished to you for your information:

(a) The following information is being furnished to you for your information:

(b) The following information is being furnished to you for your information:

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