

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER KASTAN

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 ~~(x)~~ 23 of the
Tax Law for the Year(s) 1968, 1969, :
and 1970.

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 3rd day of February, 1976, she served the within
Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon Peter Kastan

(~~XXXXXXXXXXXX~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Peter Kastan
300 East 57th Street
New York, 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 (~~XXXXXXXXXXXX~~
~~xx~~) petitioner herein and that the address set forth on said wrapper is the last
known address of the (~~XXXXXXXXXXXX~~) petitioner.

Sworn to before me this

3rd day of February, 1976.

Mary Groff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER KASTAN

For a Redetermination of a Deficiency or
a Refund of **Unincorporated Business:**
Taxes under Article (8) 23 of the
Tax Law for the Year(s) 1968, 1969, :
and 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 3rd day of February, 1976, she served the within
Notice of Decision (~~on Determination~~) by (certified) mail upon Martin Melzer, CPA

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Martin Melzer, CPA
225 West 34th Street
New York, New York 10001

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

3rd day of February, 1976.

Mary L. [Signature]

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 3, 1976

Mr. Peter Kastan
300 East 57th Street
New York, New York

Dear Mr. Kastan:

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

Please take further notice that pursuant to
Section (g) **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 GREENBERG
XXXXXXXXXXXXXXXXXXXX
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER KASTAN	:	DECISION
for Redetermination of Deficiency	:	
or for Refund of Unincorporated	:	
Business Tax under Article 23 of	:	
the Tax Law for the Years 1968,	:	
1969 and 1970.	:	

Petitioner, Peter Kastan, residing at 300 East 57th Street, New York, New York, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970. (File No. 0-54580318). 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 January 21, 1975 at 1:15 P.M. Petitioner appeared by Martin Melzer, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (James A. Scott, Esq. of counsel).

ISSUES

I. Did petitioner, Peter Kastan's activities as a ladies accessories salesman during the years 1968, 1969 and 1970 constitute the carrying on of an unincorporated business?

II. Did petitioner, Peter Kastan, 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 1968, 1969 and 1970?

FINDINGS OF FACT

1. Petitioner, Peter Kastan, and his wife filed New York State income tax resident returns for the years 1968, 1969 and 1970. He did not file New York State unincorporated business tax returns for said years.

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Peter Kastan, imposing unincorporated business tax in the total sum of \$5,222.11 upon the income received by him from his activities as a salesman during the years 1968, 1969 and 1970. It also imposed a penalty for the year 1968 in the sum of \$313.74 pursuant to former section 685(a) of the Tax Law and penalties for the years 1969 and 1970 in the total sum of \$1,320.95 pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$7,513.15.

3. Petitioner, Peter Kastan, was a ladies accessories salesman during the years 1968, 1969 and 1970. He represented Barr & Beards, Inc. in the sale of ladies scarves, neckwear and fashion accessories.

He was not a stockholder or officer of the corporation. He did not carry any sidelines. He did not have any assistants or employees.

4. During the years 1968, 1969 and 1970, Barr & Beards, Inc. did not withhold Federal or New York State income taxes or social security tax from the commissions paid to petitioner, Peter Kastan. He did receive some health and life insurance benefits. It did not reimburse him for any of his business expenses. He reported his commission income on schedule "C" of his Federal income tax returns. He maintained a self-employed retirement plan. Barr & Beards, Inc. did not exercise any substantial supervision and control 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, Peter Kastan, was advised by his accountant that he was not required to file unincorporated business tax returns for the years 1968, 1969 and 1970.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Peter Kastan, from Barr & Beards, Inc. during the years 1968, 1969 and 1970 constituted income from his regular business of selling ladies accessories 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, Peter Kastan, during the years 1968, 1969 and 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 petitioner, Peter Kastan, had reasonable cause for failing to file New York State unincorporated business tax returns and timely paying New York State unincorporated business tax for the years 1968, 1969 and 1970 and therefore the penalty assessed pursuant to former section 685(a) of the Tax Law for the year 1968 and the penalties assessed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1969 and 1970 are waived.

D. That the petition of Peter Kastan is granted to the extent of cancelling the penalty imposed in the sum of \$313.74 for the year 1968 and the penalties imposed in the total sum of \$1,320.95 for the years 1969 and 1970, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 3, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER