

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT KROSNER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (s) 23 of the :
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ (s) :
1970, 1971, 1972 and 1973.

State of New York
County of Albany

Catherine Steele, 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 4th day of October, 1976, she served the within
Notice of Decision by (certified) mail upon Robert Krosner
~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Robert Krosner
75 Bayberry Avenue
Garden City, New York 11530
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)~~
~~xxx~~ 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

4th day of October, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT KROSNER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1970, 1971, 1972 and 1973.

State of New York
County of Albany

Catherine Steele, 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 4th day of October, 1976, she served the within
Notice of Decision by (certified) mail upon Paul Massotti, PA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Paul Massotti, PA
Curcio & Massotti
402 Union Avenue
Brooklyn, New York 11211

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

4th day of October, 1976.

Janet Mack

Catherine Steele



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

October 4, 1976

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

Mr. Robert Krosner
75 Bayberry Avenue
Garden City, New York 11530

Dear Mr. Krosner:

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

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

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ROBERT KROSNER :

DECISION

for a Redetermination of a Deficiency or for a :
Refund of Unincorporated Business Taxes under :
Article 23 of the Tax Law for the Years 1970, :
1971, 1972 and 1973.

Petitioner, Robert Krosner, 75 Bayberry Avenue, Garden City, New York 11530, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1970, 1971, 1972 and 1973 (File #3-45016441). A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 13, 1976, at 1:15 P.M. The petitioner was represented by Paul Massotti. The Income Tax Bureau was represented by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUE

Did the petitioner's activities as a furniture salesman during the years 1970, 1971, 1972 and 1973 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Robert Krosner, timely filed New York State income tax returns for the years 1970, 1971, 1972 and 1973 but did not file unincorporated business tax returns for those years.

2. On May 19, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Robert Krosner, imposing unincorporated business tax upon the income received by him from his activities as a furniture salesman during the years 1970, 1971, 1972 and 1973. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$11,370.18.

3. During the years in question, petitioner, Robert Krosner, was a furniture salesman. He represented three companies related to each other through common ownership.

4. The years 1970 and 1971 are not now an issue. Petitioner submitted a check in the amount of \$5,459.51 in full payment of his liability for 1970 and 1971.

5. Petitioner contended that in January, 1972 his status changed in that he restricted his selling activities to three firms, Essex Chair Co., Vermont Furniture Company, Inc. and Bennington Company. He received individual commission checks from each company and each company withheld payroll taxes for his commissions.

6. Petitioner testified that he used one order blank for the companies of Bennington and Vermont and a separate order blank for Essex Chair Co.

7. Petitioner was not required to work stated or fixed hours, nor was he obliged to regularly report to any supervisors.

8. Petitioner was not reimbursed for his selling expense and he filed Schedule "C"s with his Federal income tax returns.

9. Petitioner developed his own leads, visited his customers on his own volition as against being directed to do so by his companies, and in all manners had sole control over his sales activities and techniques in making sales.

10. Petitioner was not a member of any company pension plan.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Robert Krosner, from the firms he represented in the years 1972 and 1973 constituted income from his regular business of selling furniture and not compensation as an employee exempt from the imposition of 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, Robert Krosner, during the years 1972 and 1973, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Robert Krosner is denied and the Notice of Deficiency, issued May 19, 1975, is sustained.

DATED: Albany, New York
October 4, 1976

STATE TAX COMMISSION


PRESIDENT.


COMMISSIONER


COMMISSIONER