

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OSCAR MANKET AND

BEATRICE MANKET

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Unincorporated Business
Taxes under Article ~~(xx)~~ 23 of the
Tax Law for the Year(s) ~~xxxxxx~~ 1968, :
1969, 1970, 1971, and 1972.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Carmen Mottolese , 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 13th day of September , 19 76, she served the within
Notice of Decision by (certified) mail upon Oscar market and
Beatrice Market ~~xxxxxx~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Oscar Manket
57 Fallon Avenue
Elmont, New York 11003

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 ~~xxxxxx~~
~~xxxxxx~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~xxxxxx~~ petitioner.

Sworn to before me this

13th day of September , 19 76

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
OSCAR MANKET AND
BEATRICE MANKET

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(22)~~ 23 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ 1968, :
1969, 1970, 1971 and 1972.

State of New York
County of Albany

Carmen Mottolese , 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 13th day of September , 1976 , she served the within
Notice of Decision by (certified) mail upon Andrew J.
Julien, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Andrew J. Julien, Esq.
271 Madison Avenue
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 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

13th day of September , 1976.

Carmen Mottolese

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

September 13, 1976

TELEPHONE: (518) **437-3850**

Mr. & Mrs. Oscar Manket
57 Fallon Avenue
Elmont, New York 11003

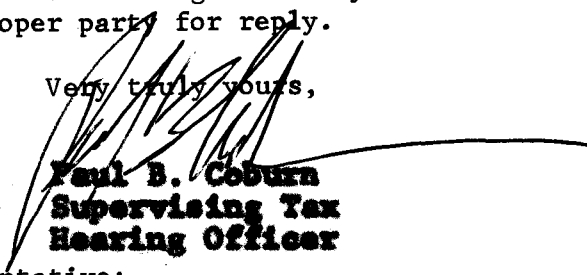
Dear Mr. & Mrs. Manket:

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

Please take further notice that pursuant to
Section(§) **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	:	
OSCAR MANKET and	:	DECISION
BEATRICE MANKET	:	
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1968, 1969, 1970, 1971	:	
and 1972.	:	
	:	

Petitioners, Oscar Manket and Beatrice Manket, residing at 57 Fallon Avenue, Elmont, New York, have 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 1968 through 1972. (File No. 00553). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 9, 1976, at 10:45 A.M. Petitioner appeared by Andrew J. Julien, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Whether the selling activities of Oscar Manket during the years 1968 through 1972 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioners, Oscar Manket and Beatrice Manket, filed New York State combined income tax returns for each of the years 1968 through 1972. Petitioner, Oscar Manket, did not file an unincorporated business tax return for any of these years.

2. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioner, Oscar Manket, imposing unincorporated business taxes in the sum of \$5,478.94 plus interest of \$1,211.33 for a total allegedly due of \$6,690.27 for the years 1968, 1969, 1970 and 1972.

A similar Notice of Deficiency and Statement of Audit Changes regarding the year 1971 was issued against petitioner, Oscar Manket, on May 21, 1973, imposing unincorporated business tax of \$1,097.64 plus interest of \$72.42, for a total of \$1,170.06.

3. Petitioners timely filed petitions for redetermination of unincorporated business tax for the years 1968, 1969, 1970, 1972 and for the year 1971.

4. During the years 1968 through 1972, and for a quarter century prior thereto, petitioner, Oscar Manket, was a jewelry salesman. He represented three firms which manufactured non-competitive products. He had no office at any of the firms, nor did he have any employees.

5. During the years 1968 through 1972 inclusive, the firms for which petitioner, Oscar Manket, sold merchandise withheld Federal and New York State income taxes and social security tax from the commissions paid to him. They covered him for workmen's compensation and unemployment insurance. He was not reimbursed for any of his business expenses. He deducted business expenses from his gross commissions on his Federal income tax return. He did not file a Schedule C "Statement of Profit (or loss) From Business" with the Form 1040 Federal income tax returns for the years 1968 through 1972.

6. Petitioner, Oscar Manket, was limited by each of the principals for whom he sold to a particular territory in which he could sell. Each firm reserved the right to approve itineraries for road trips, to approve credit, and to bill customers for the sales made by petitioner, Oscar Manket. He was required to report by telephone his whereabouts each day. The firms for which petitioner sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques, or over the time he devoted to sales.

7. Beatrice Manket did not take part in any unincorporated business in the years 1968 through 1972. No Notice of Deficiency was issued against her for unincorporated business tax.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Oscar Manket, from the firms he represented during the years 1968 through 1972 constituted income from his regular business of selling jewelry, and was not compensation as an employee exempt from the imposition of the unincorporated business tax within the meaning and intent of section 703(b) of the Tax Law.

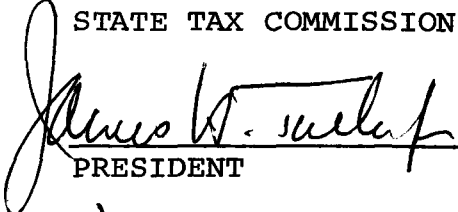
B. That the aforesaid activities of petitioner, Oscar Manket, during the years 1968 through 1972 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That no unincorporated business tax liability has been determined against Beatrice Manket. She has no liability for unincorporated business tax or interest.

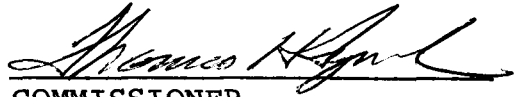
D. That the petition of Oscar Manket is denied and the notices of deficiency issued May 21, 1973, and April 12, 1974, are sustained.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER