

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FREUDENSTEIN & KUPPER

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) ~~XXXX~~ ~~XXXX~~ (s) :  
1966, 1967 and 1968.

State of New York  
County of Albany

Bruce Batchelor , 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 14th day of January , 19 77, she served the within  
Notice of Decision by (certified) mail upon Freudenstein & Kupper

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

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

Freudenstein & Kupper  
c/o Martin Freudenstein  
420 Cumberland Avenue  
Teaneck, New Jersey 07666

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

14th day of January , 1977

Bruce Batchelor

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

January 14, 1977

TELEPHONE: (518) **457-1723**

Freudenstein & Kupper  
c/o Martin Freudenstein  
420 Cumberland Avenue  
Teaneck, New Jersey 07666

Gentlemen:

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

Please take further notice that pursuant to  
Section(4) **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*  
**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
FREUDENSTEIN & KUPPER :  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the Years 1966, 1967 and 1968. :  
:

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DECISION

Petitioners, Freudenstein and Kupper, c/o M. Freudenstein, 55 Park Terrace E., New York, New York 10034, 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 1966, 1967 and 1968. (File No. 1556).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on June 9, 1976 at 10:45 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abe Schwartz, Esq. of counsel).

ISSUES

I. Did the activities of petitioners, Richard Kupper and Martin Freudenstein, in their joint venture as a commission sales partnership during the years 1966, 1967 and 1968 constitute the carrying on of an unincorporated business?

II. If petitioners activities constituted the carrying on of an unincorporated business, were petitioners entitled to more than \$5,000 as an unincorporated business tax exemption for each of the years in question?

FINDINGS OF FACT

1. Martin Freudenstein and Richard Kupper, individually and as co-partners, d/b/a the firm name and style of Freudenstein and Kupper, timely filed New York State partnership returns for the years 1966, 1967 and 1968; the unincorporated business tax schedules on the aforesaid returns were left blank.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes against the partnership of Freudenstein and Kupper imposing unincorporated business tax upon the income received by said partnership from activities of the partnership as a commission sales business during the years 1966, 1967 and 1968. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,696.22.

3. The petitioners, Martin Freudenstein and Richard Kupper, formed a joint venture, Freudenstein and Kupper, on or about January, 1966. During the years 1966, 1967 and 1968, each partner shared equally in the income and expenses of said joint venture.

4. The petitioners, Martin Freudenstein and Richard Kupper, were sales representatives representing several firms of noncompeting lines of childrens' apparel. The petitioners were compensated on a commissions basis. The commissions earned by the petitioners were deposited in the joint venture account of Freudenstein and Kupper.

5. The petitioners, Martin Freudenstein and Richard Kupper, were not reimbursed for any expenses incurred by the firms they represented. However, the expenses were reimbursed from the joint venture, Freudenstein and Kupper.

6. The firms petitioners represented during the years 1966, 1967 and 1968 did not withhold income taxes or social security taxes from the commission income earned by petitioners and such firm did not include petitioners in any pension plan or provide them with fringe benefits provided to employees of such firms.

7. There was no division of petitioners' time or effort by the firms they represented.

#### CONCLUSIONS OF LAW

A. That the activities of petitioners, Richard Kupper and Martin Freudenstein, in their joint venture as a commission sales partnership d/b/a Freudenstein and Kupper during the years 1966, 1967 and 1968 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law.

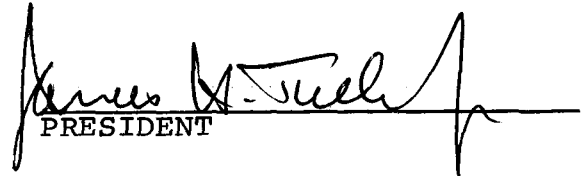
B. That the commission income received in connection with the aforesaid activities constituted income subject to unincorporated business tax.

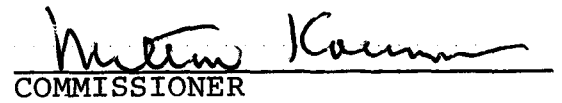
C. That unincorporated business tax exemption to which the petitioners were entitled in accordance with the meaning and intent of section 709 of the Tax Law was limited to \$5,000 for each of the years in question.

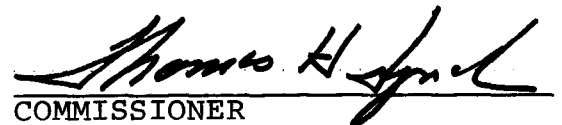
D. That the petition of Freudenstein and Kupper is denied  
and the Notice of Deficiency issued April 13, 1970, is sustained.

DATED: Albany, New York  
January 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER