

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

THE ESTATE OF VICTOR GOLDFARB,  
by Bertha Goldfarb, Executrix  
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)  
1969 through 1973.

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of January, 1977, he served the within  
Notice of Decision by (certified) mail upon Goldfarb, by  
Bertha Goldfarb, Executrix  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: The Estate of Victor Goldfarb  
Bertha Goldfarb, Executrix  
418 Compass Street  
Uniondale, NY 11553  
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

25th day of January, 1977.

Bruce Batchelor

Janet Back

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE ESTATE OF VICTOR GOLDFARB, :  
by Bertha Goldfarb, Executrix :  
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)~~ :  
1969 through 1973.

AFFIDAVIT OF MAILING

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 25th day of January , 1977, she served the within  
Notice of Decision by (certified) mail upon Stephen J. Schwartz,  
Esq. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Stephen J. Schwartz, Esq.  
65 Roosevelt Avenue  
Valley Stream, NY 11581  
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

25th 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 25, 1977

TELEPHONE: (516) 457-1723

The Estate of Victor Goldfarb  
Bertha Goldfarb, Executrix  
418 Compass Street  
Uniondale, NY 11553

Dear Mrs. Goldfarb:

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

Please take further notice that pursuant to  
Section(s) **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*

Enc.

**Frank J. Puccia**  
**Supervisor of**  
**Small Claims Hearings**

cc: Petitioner's Representative:

Taxing Bureau's Representative:

In the Matter of the Petition :  
of :  
THE ESTATE OF VICTOR GOLDFARB, :  
by Bertha Goldfarb, Executrix : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the Years 1969 through 1973. :

Petitioner, Estate of Victor Goldfarb, by Bertha Goldfarb, Executrix, residing at 418 Compass Street, Uniondale, New York 11553, 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 1969 through 1973 (File Nos. 0-58878859 and 3-45074198).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on September 14, 1976, at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Stephen J. Schwartz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Paul B. Rosenkranz, Esq. of counsel).

Whether the decedent, Victor Goldfarb's activities as a clothing salesman during the years 1969 through 1973 constituted the carrying on of an unincorporated business?

FINDINGS OF FACT

1. The decedent, Victor Goldfarb, and his wife filed New York State income tax returns for the years 1969 through 1973. He did not file New York State unincorporated business tax returns for said years.

2. On June 30, 1975, the Income Tax Bureau issued two Statements of Audit Changes against the decedent, Victor Goldfarb, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1969 through 1973. In accordance with the aforesaid Statements of Audit Changes, it issued two Notices of Deficiency in the total sum of \$2,121.15.

3. During the years 1969 and 1970, the decedent, Victor Goldfarb, representing three firms sold clothing on a commission basis. Palmland Fashions, Inc. was one of the firms and the predominate source of his commission income.

4. During the years 1971, 1972 and 1973, the decedent, Victor Goldfarb, sold clothing for Palmland Fashions Inc. exclusively.

5. During the years 1969 and 1970, the three firms for whom the decedent, Victor Goldfarb, sold clothing did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. He deducted expenses incurred in connection with his sales activities on schedule "C" of his Federal income tax return; he was not reimbursed by his principals for any of these expenses. He was not provided with an office by any of his principals; he maintained an office in his home. The firms for

whom he sold did not exercise any substantial control or supervision over his sales activities or techniques or over the time he devoted to sales.

6. During the years 1971, 1972 and 1973, petitioner, Victor Goldfarb's relationship with Palmland Fashions, Inc. remained essentially the same as during the years 1969 and 1970, with the exception that it became his sole principal. There was no increase in the supervision or control exercised by Palmland Fashions, Inc. over petitioner's selling activities, techniques or time.

7. In 1963, Palmland Fashions, Inc. applied for and obtained a life insurance policy from the New York Life Insurance Company on the life of the decedent, Victor Goldfarb. The policy named Bertha Goldfarb, his wife, as beneficiary. All premiums were paid by Palmland Fashions, Inc.

#### CONCLUSIONS OF LAW

A. That, the income received by the decedent, Victor Goldfarb, during the years 1969 through 1973 constituted income from his regular business of selling clothing and not as compensation as an employee exempt from the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law. The fact that Palmland Fashions, Inc. purchased a life insurance policy on the decedent's life and named his wife as beneficiary does not, in itself, alter this conclusion.

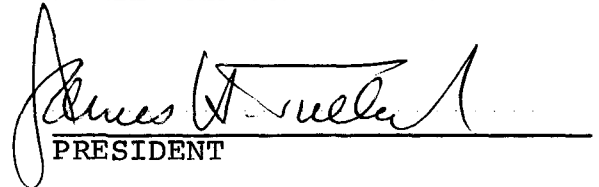
B. That, the aforesaid activities of the decedent, Victor Goldfarb, during the years 1969 through 1973 constituted the carrying

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.

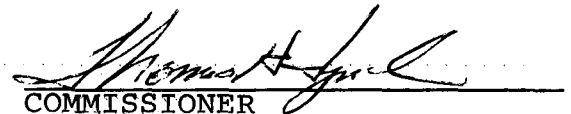
C. That, the petition of the Estate of Victor Goldfarb, by Bertha Goldfarb, Executrix is denied and the Notices of Deficiency dated June 30, 1975 are sustained.

DATED: Albany, New York  
January 25, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER