

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH SPIER

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) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ :
1968, 1969 & 1970.

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 4th day of March, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Joseph Spier

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Joseph Spier
6 Horseshoe Lane
Roslyn Heights, New York 11577

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 March, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH SPIER

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) ~~or Period(s)~~ :
1968, 1969 & 1970.

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 4th day of March, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Lewis Cohen
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Lewis Cohen, CPA
799 Broadway
New York, New York 10003
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 March, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH SPIER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (26) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968, 1969 & 1970.

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 4th day of March, 1977, he served the within
Notice of Decision by (certified) mail upon Norman Kliegman

(representative of) the petitioner in the within proceeding,

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

Norman Kliegman, Esq.
420 Lexington Avenue
New York, New York 10017

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 March, 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

March 4, 1977

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

Mr. Joseph Spier
6 Horseshoe Lane
Roslyn Heights, New York 11577

Dear Mr. Spier:

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,

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	:	
JOSEPH SPIER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

Petitioner, Joseph Spier, 6 Horseshoe Lane, Roslyn Heights, New York 11577, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1969 and 1970. (File No. 0-58502488). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1976 at 9:15 A.M. Petitioner appeared by Norman Kliegman, Esq. and Lewis Cohen, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Did petitioner, Joseph Spier's activities as a salesman during the years 1968, 1969 and 1970 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Joseph Spier, filed New York State income tax resident returns for the years 1968, 1969 and 1970. He listed his

occupation as sales representative on said returns. He did not file New York unincorporated business tax returns for said years.

2. On October 28, 1974, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioner, Joseph Spier, imposing unincorporated business tax upon the income received by him from his activities as a sales representative for the years 1968, 1969 and 1970. It also imposed a penalty of \$366.47 in accordance with sections 685(a)(1) and (a)(2) of Article 22 and section 722 of Article 23 of the Tax Law.

3. Petitioner, Joseph Spier, worked as a commission salesman in 1968, 1969 and 1970 for American Linen Imports and American Quilt Cover Manufacturers. In 1969 and 1970, he also worked as a commission salesman for N. Sumergrade and Sons. The items sold by him for each firm were noncompetitive. He made sales for all three firms to substantially the same customers. He is assigned a territory by his principals. He maintains no agreement with any of his principals as to the division of his working time.

4. Petitioner, Joseph Spier, activities as a commissioned salesman consists of making sales to customers in his assigned territory. The sales made by him are subject to the approval of the companies he represents. On occasion, he is required to be at the sales offices, where he is provided with office facilities. When serving clients at the sales offices, the firms pay for expenses such as business lunches.

5. Petitioner, Joseph Spier, was paid by the firms he represented on a commission basis. These firms did not withhold any payroll taxes from commissions paid to him. He was not a member of the

firms' pension plan. He was not reimbursed for any of his expenses except on those occasions when he serviced clients at the sales office. He listed his income and expenses on Schedule C of his Federal income tax returns for 1968, 1969 and 1970.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Joseph Spier, during the years 1968, 1969 and 1970 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(b) of the Tax Law.

B. That petitioner, Joseph Spier, had reasonable cause for not filing unincorporated business tax returns for the years 1968, 1969 and 1970 and therefore the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

C. That the petition of Joseph Spier is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1968, 1969 and 1970 in the total sum of \$366.47 and the Notice of Deficiency issued October 28, 1974 is reduced from \$1,514.91 to \$1,148.44, together with such interest as may be due from October 28, 1974 and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER