

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JULIUS SPITZER

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 ~~(six or Periods)~~ 1970. :

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~he~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of April , 1977, ~~he~~ he served the within
Notice of Decision by (certified) mail upon Julius Spitzer

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

Mr. Julius Spitzer
1647 44th Street
Brooklyn, New York 11204

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

26th day of April , 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

April 26, 1977

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

Mr. Julius Spitzer
1647 44th Street
Brooklyn, New York 11204

Dear Mr. Spitzer:

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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JULIUS SPITZER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1970.	:	

Petitioner, Julius Spitzer, residing at 1647 44th Street, Brooklyn, New York 11204, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1970 (File No. 0-54222764).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on September 16, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the income received by the petitioner, Julius Spitzer, derived from his activities as a sales representative during the year 1970 was subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Julius Spitzer, and his wife timely filed a New York State resident income tax return for the year 1970. He did not file an unincorporated business tax return for said year.

2. On February 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Julius Spitzer, imposing unincorporated business tax upon the grounds that his activities as an independent contractor constitute the carrying on of an unincorporated business and the income derived from this source is subject to the unincorporated business tax. The Income Tax Bureau also imposed penalties under sections 685(a)(1) and 685(a)(2) for failure to file and pay unincorporated business tax for the year 1970. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$460.45.

3. Petitioner, Julius Spitzer, sold men's apparel during the year 1970. He received commissions from four unaffiliated firms amounting to \$20,134.48 of which \$19,626.21 was received from Steinmetz Bros. Inc. The petitioner asserted that the income in the sum of \$508.27 was earned picking up orders for three firms and did not result from selling activities.

4. During the year 1970 Steinmetz Bros. Inc. gave the petitioner, Julius Spitzer, a draw of \$120 per week against commissions, from which, Federal and New York State income taxes and social security taxes were withheld. The above said firm did not have any employee-related plans such as health insurance. The petitioner, Julius Spitzer, was covered under unemployment insurance and workmens compensation.

5. The petitioner, Julius Spitzer, was supplied with an office and clerical help by said firm. He was assigned a specific territory and supplied samples. He did not maintain an office in his home and did not have any assistants.

CONCLUSIONS OF LAW

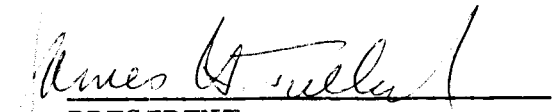
A. That the income received by petitioner, Julius Spitzer, during the year 1970 from Steinmetz Bros. Inc., constituted compensation as an employee exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Julius Spitzer, during the year 1970 did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

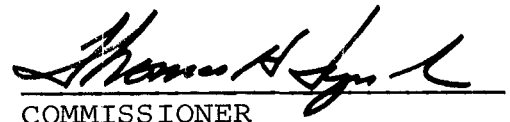
C. That the petition of Julius Spitzer, is granted
and the Notice of Deficiency issued February 25, 1974,
is cancelled.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M **SMALL CLAIMS**
STATE OF NEW YORK

Department of Taxation and Finance
TAX APPEALS BUREAU

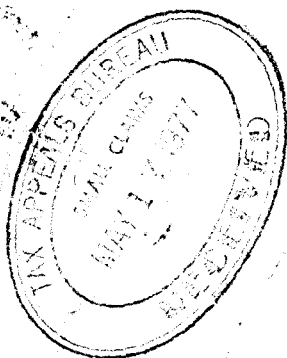
STATE CAMPUS
ALBANY, N. Y. 12227

RECEIVED
TAX APPEALS BUREAU
JAN 13 1977
ALBANY, N. Y.
No such office in state
on or before 11

NOTICE

JAN 13

Mr. Julius Spitzer
1647 44th Street
Brooklyn, New York 11204



STATE OF NEW YORK
STATE TAX COMMISSION

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Sworn to before me this

20th day of May , 1977.

Bruce Batchelor

Just Back