

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING TANNENBAUM

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) ~~on Report (x)~~ :
1964, 1965 and 1966.

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 12th day of May, 1977, she served the within
Notice of Decision by (certified) mail upon Irving Tannenbaum

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

Mr. Irving Tannenbaum
700 Shore Road
Long Beach, New York 11561

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

12th day of May, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING TANNENBAUM

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~~ :
1964, 1965 and 1966.

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 12th day of May , 1977 , he served the within
Notice of Decision by (certified) mail upon Irwin G. Shapiro

(representative of) the petitioner in the within proceeding,

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

Irwin G. Shapiro, CPA
Shapiro and Rosenstein, P.C.
200 East 58th Street
New York, New York 10022

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

12th day of May , 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

May 12, 1977

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

Mr. Irving Tannenbaum
700 Shore Road
Long Beach, New York 11561

Dear Mr. Tannenbaum:

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

Please take further notice that pursuant to
Section(m) **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	:	
	:	
IRVING TANNENBAUM	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1964, 1965 and 1966.	:	

Petitioner, Irving Tannenbaum, residing at 450 Shore Road, Longbeach, New York 11561, 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 years 1964, 1965 and 1966. (File No. 00681).

A small claims hearing was held before Philip Mercurio, 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 Irwin G. Shapiro. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq., of counsel).

ISSUES

I. Whether the income received during the years 1964, 1965 and 1966, by the petitioner, Irving Tannenbaum, from his activities as manufacturer's representative is subject to the unincorporated business tax.

II. Whether the petitioner, Irving Tannenbaum, had a regular place of business located within and without New York during said years.

III. Whether the petitioner, Irving Tannenbaum, had reasonable cause for not filing unincorporated business tax returns.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Irving Tannenbaum, and his wife timely filed New York State resident returns for the years 1964, 1965 and 1966. He did not file unincorporated business tax returns for said years.

2. On May 26, 1969, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Irving Tannenbaum, imposing unincorporated business tax upon the income received by the petitioner, Irving Tannenbaum, from his activities as a manufacturer's representative during the years 1964, 1965 and 1966. It also imposed a penalty under section 685(a) for failure to file unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,164.76.

3. Petitioner, Irving Tannenbaum, was a commissioned manufacturer's representative during the years 1964, 1965 and 1966. He represented three firms during said years. The products sold by petitioner for each firm were noncompetitive.

4. During the years 1964, 1965 and 1966, the firms which the petitioner represented did not withhold Federal and New York State income taxes and social security tax from the commissions paid him. He was not reimbursed for any of his business expenses. He was free to work for other firms as long as they were noncompetitive. He did not have any written employment contracts. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities or techniques or over the time he devoted to sales.

5. Petitioner, Irving Tannenbaum, was not covered by any of the firms he represented during the years 1964, 1965 and 1966, under any employee-related plans, such as pension plan, unemployment insurance, or compensation or disability benefits.

6. Petitioner reported the commissions and deducted the business expenses on Federal schedule "C".

7. Petitioner, Irving Tannenbaum, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1964, 1965 and 1966.

8. The aforesaid activities of petitioner during the years 1964, 1965 and 1966 constituted the carrying on of an unincorporated business and his income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

9. Petitioner has not sustained the burden of proof that he had a regular place of business located outside the State of New York within the meaning and intent of section 707(a) of the Tax Law.

10. Petitioner, Irving Tannenbaum, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1964, 1965 and 1966, and therefore the penalties assessed pursuant to section 685(a) of the Tax Law are waived.

11. The petition of Irving Tannenbaum is granted to the extent of cancelling the penalties imposed in the sum of \$202.80 for the years 1964, 1965 and 1966; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 26, 1969; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 12, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER