

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERNEST GORDON

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) ~~xxxxxx~~ ~~xxxxxx~~ :
1967, 1968, 1969 and 1971.

State of New York
County of Albany

John Huhn , 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 31st day of March , 1978, he served the within
Notice of Decision by (certified) mail upon Ernest Gordon

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ernest Gordon
11 East 86th Street, Apt. 2-B
New York, New York 10028

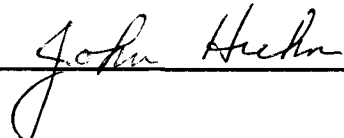
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~xxxxxx~~) 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

31st day of March , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

March 31, 1978

Mr. Ernest Gordon
11 East 86th Street, Apt. 2-B
New York, New York 10028

Dear Mr. Gordon:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(b) 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywat
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ERNEST GORDON :

DECISION

for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1967, 1968, 1969 and :
1971. :

Petitioner, Ernest Gordon, 11 East 86th Street, Apt. 2-B, New York, New York 10028, 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 1967, 1968, 1969 and 1971 (File No. 00240).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1976 at 2:45 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the income received by petitioner as a salesman of ladies' apparel during the years 1967, 1968, 1969 and 1971 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Ernest Gordon, and his wife filed joint New York State income tax resident returns for the years 1967, 1968 and 1969 and a New York State combined income tax return for 1971. Petitioner did not file New York State unincorporated business tax returns for said years.

2. During the years 1967, 1968, 1969 and 1971, petitioner was a sales representative representing three principals. He sold ladies' apparel for each of said principals. Two of the principals offered non-competitive lines of apparel.

3. On June 28, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioner in the sum of \$5,187.13 for the years 1967, 1968 and 1969. On July 29, 1974, it issued a Notice against him for \$1,691.61 for the year 1971. The notices were issued on the grounds that the income derived from petitioner's activities during the years at issue was subject to unincorporated business tax.

4. During said years, petitioner was compensated by his principals on a commission basis. The principals did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him, nor did they reimburse him for expenses incurred by him in connection with his sales activities. He deducted such expenses on Schedule "C" of his Federal income tax return for each of the years at issue.

5. Petitioner participated in a "Keogh" retirement plan during said year.

6. The principals for whom petitioner sold did not exercise any substantial supervision or control over his sales techniques or over the time he devoted to sales. His principals assigned his sales territory and approved or denied his customers' credit.

CONCLUSIONS OF LAW

A. That the income received by petitioner from the principals he represented during the years 1967, 1968, 1969 and 1971 constituted income from his regular business of selling ladies' apparel.

B. That the aforesaid activities of petitioner during the years 1967, 1968, 1969 and 1971 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; thus, his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That the petition of Ernest Gordon is denied and the notices of deficiency issued on June 28, 1971 and July 29, 1974 are sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York
March 31, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER