

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY WEISENBERG

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~~ :  
1971 and 1972.

State of New York  
County of Albany

John Huhn , 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 6th day of February , 19 78, she served the within  
Notice of Decision by (certified) mail upon Sidney Weisenberg

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

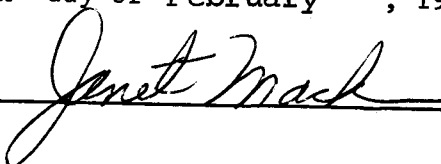
as follows: Mr. Sidney Weisenberg  
14-07 212th Street  
Bayside, New York 11360

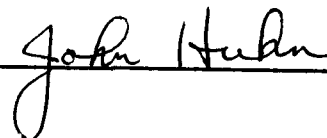
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~of the~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

6th day of February , 19 78

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

**February 6, 1978**

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

**Mr. Sidney Weisenberg  
14-07 212th Street  
Bayside, New York 11360**

**Dear Mr. Weisenberg:**

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 **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 Chrygasty  
Hearing Examiner**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SIDNEY WEISENBERG	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971 and 1972.	:	

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Petitioner, Sidney Weisenberg, residing at 14-07 212th Street, Bayside, New York 11360, 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 1971 and 1972 (File No. 16878).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 25, 1977 at 1:15 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether the selling activities of the petitioner, Sidney Weisenberg, during the years 1971 and 1972 constituted the carrying on of an unincorporated business.

#### FINDINGS OF FACT

1. Petitioner, Sidney Weisenberg, and his wife filed New York State income tax resident returns for the years 1971 and 1972. He did not file New York State unincorporated business tax returns for said years.

2. On October 26, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner on the grounds that the income derived from his selling activities was subject to unincorporated business tax.

3. Petitioner was a furniture and lamp salesman during the years 1971 and 1972. He represented two principals during said years. The products sold by petitioner were noncompetitive. He was paid on a commission basis by his principals.

4. Petitioner's principals did not withhold Federal and New York State income taxes (or social security taxes) from his commission income during the years 1971 and 1972. He was not reimbursed for any of the business expenses he incurred in connection with his sales activities. He was free to work for other principals as long as the lines of the other principals were noncompetitive. He did not have any written employment contracts.

5. Petitioner's principals did not exercise any substantial supervision or control over his sales activities and sales techniques, or over the time he devoted to sales. However, he was required to attend periodic trade shows and sales meetings, to submit periodic reports and to restrict his sales efforts to a specific territory.

6. Petitioner was not covered by his principals under any employee-related plans. He filed Federal schedules "C" and "Self Employment" forms for said years. In 1972, petitioner belonged to a "Keogh Plan".

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Sidney Weisenberg, from the principals he represented during the years 1971 and 1972 constituted income from his regular business of selling. It did not constitute compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

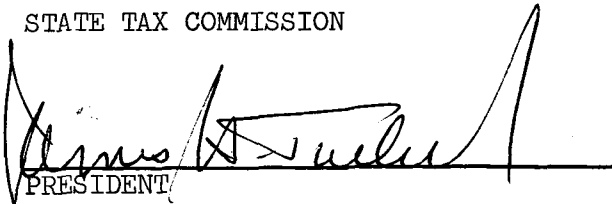
B. That the aforesaid activities of petitioner during the years 1971 and 1972 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law, and that his income derived therefrom is subject to unincorporated business tax.

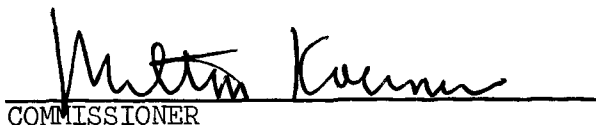
C. That the petition of Sidney Weisenberg, is denied and the Notice of Deficiency issued on October 26, 1976 in the sum of \$1,893.13 is sustained.

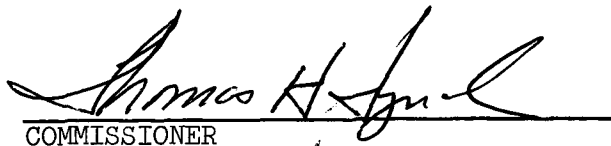
DATED: Albany, New York

February 6, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER