

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Irwin B. Fass :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Unincorporated Business Tax :  
under Article 23 of the Tax Law  
for the Year 1969. :

State of New York

County of Albany

Jay Vredenburg, 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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Irwin B. Fass, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irwin B. Fass  
74 Briar La.  
Jericho, NY 11753

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
17th day of August, 1979.

Victoria Gary

Jay J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Irwin B. Fass :

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Unincorporated Business Tax :  
under Article 23 of the Tax Law  
for the Year 1969. :

State of New York  
County of Albany

Jay Vredenburg, 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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Joseph F. Carlino the 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 F. Carlino  
Carlino, Pearsall & Soviero  
114 Old Country Rd.  
Mineola, NY 11501

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  
17th day of August, 1979.

Victoria Gary

Jay J. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Irwin B. Fass  
74 Briar La.  
Jericho, NY 11753

Dear Mr. Fass:

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(s) 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,

A handwritten signature in cursive script, reading "Michael Alexander".

cc: Petitioner's Representative  
Joseph F. Carlino  
Carlino, Pearsall & Soviero  
114 Old Country Rd.  
Mineola, NY 11501  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

IRWIN B. FASS :

DECISION

for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law :  
for the Year 1969.

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Petitioner, Irwin B. Fass, 74 Briar Lane, Jericho, New York 11753, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1969 (File No. 01453).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 30, 1977 at 1:15 P.M. Petitioner appeared by Eisner, Levy, Steel & Bellman, P.C. (Arthur N. Read, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the commissions received by petitioner, a multi-line salesman, are subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Irwin B. Fass, filed a New York State income tax resident return for 1969, but did not file an unincorporated business tax return for said year. He did file an unincorporated business tax return for 1968.

2. On April 10, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, imposing unincorporated business tax on income which he received from his activities as a multi-line salesman during 1969. Accordingly, the Income Tax Bureau issued a Notice of Deficiency against him in the amount of

\$402.46, plus penalties of \$136.83 and interest of \$48.00, for a total of \$587.29.

3. During 1969 petitioner was a salesman selling ladies' coordinated sportswear for three unaffiliated firms. The products for each firm were noncompetitive. His territory covered the New York metropolitan area. He received the following commissions from:

	<u>Amount</u>
Tudor Square Sportswear, Inc.	\$14,400.00
Bernardo, Inc.	1,625.00
Carl Gutman & Co., Inc.	10,055.03

The aforementioned firms issued petitioner a Form 1099. They did not deduct Federal or New York State withholding taxes, or social security. Petitioner received a draw against commissions from Tudor. He was not reimbursed for his business expenses by any of his principals. On his Federal Schedule "C", petitioner deducted business expenses of \$10,683.00.

4. There was no agreement among petitioner's principals as to the division of his time or efforts on their behalf.

5. The firms for which petitioner sold merchandise did not exercise any substantial supervision or control over his sales activities or techniques, or over the time he devoted to sales, except to limit the territory in which he could sell.

6. Petitioner was advised by his counsel that he was not subject to unincorporated business tax and that he was not required to file unincorporated business tax returns. He relied on said advice.

#### CONCLUSIONS OF LAW

A. That the commission income received by petitioner, Irwin B. Fass, from the firms he represented during 1969 constituted income from his regular business of selling ladies' sportswear, and 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, Irwin B. Fass, during 1969 constituted the carrying on of an unincorporated business; thus, his income derived therefrom was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

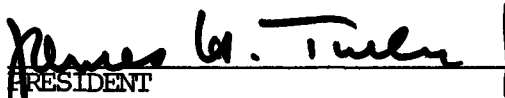
C. That the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are hereby cancelled on the basis of Finding of Fact "6".

D. That except as modified above, the petition of Irwin B. Fass is hereby denied.

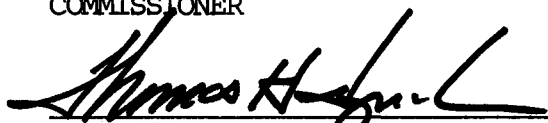
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER