

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MURRAY FISTEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of **Unincorporated Business** :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1970 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 23rd day of February, 1979, he served the within  
Notice of Decision by (certified) mail upon Murray Fistel  
~~XXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Murray Fistel  
2371 East 27th Street  
Brooklyn, New York 11229  
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 ~~XXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

23rd day of February, 1979

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MURRAY FISTEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of **Unincorporated Business** :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1970 and 1971.

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
Xhe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of February, 1979, X she served the within  
Notice of Decision by (certified) mail upon Jack Berkowitz,  
CPA (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Jack Berkowitz, CPA  
500 West 235th St.  
Bronx, NY 10463

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

23rd day of February, 1979.

Marilyn J. Papneer

John Huhn



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

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

**February 23, 1979**


**Murray Fistel  
2371 East 27th Street  
Brooklyn, New York 11229**

**Dear Mr. Fistel:**

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,  
  
**Joseph Chrywaty**  
**Supervisor of Small Claims**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
MURRAY FISTEL  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business Tax  
under Article 23 of the Tax Law for the  
Years 1970 and 1971.

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DECISION

Petitioner, Murray Fistel, 2371 East 27th Street, Brooklyn, New York 11229, 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 1970 and 1971 (File No. 14284).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 at 1:15 P.M. Petitioner appeared by Jack Berkowitz, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

#### ISSUE

Whether petitioner's activities as a sales representative during 1970 and 1971 constituted the carrying on of an unincorporated business.

#### FINDINGS OF FACT

1. Petitioner timely filed New York State personal income tax returns for 1970 and 1971. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency against him on January 26, 1976 for 1970 and 1971, in the amount of \$2,222.75 in unincorporated business tax, plus \$560.12 in interest, for a sum of \$2,782.87.

3. Petitioner was a sales representative during the years at issue. He sold children's wear for three principals and was reimbursed for the sales he made on a commission basis. He maintained an office at 112 West 34th Street in New York City where the merchandise was displayed. Petitioner was not reimbursed for office or any other expense by his principals. Petitioner shared the office with another sales representative who paid a share of the office expense. They cooperated in sales and split commissions.

4. There was no control over petitioner's day-to-day activities by his principals. They did not withhold income taxes or social security from his compensation, nor was he covered by unemployment and disability insurance. He filed Federal Schedule "C" to claim deductions for business expenses. Petitioner had his own letterhead.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner, Murray Fistel, as a sales representative during 1970 and 1971 constituted the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703 of the Tax Law; thus, the income derived therefrom was subject to unincorporated business tax.

B. That the petition of Murray Fistel is denied and the Notice of Deficiency issued January 26, 1976 is sustained, together with such additional interest as may be lawfully owing.

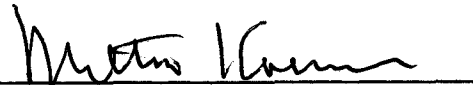
DATED: Albany, New York

February 23, 1979

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER