

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Alois R. Eysler :

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 Years 1968-1970. :

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Alois R. Eysler, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alois R. Eysler  
137 Parkway Dr.  
Roslyn, NY 11576

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  
5th day of September, 1980.

*Duthe Bank*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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Alois R. Eysler :  
for Redetermination of a Deficiency or a Revision :  
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Unincorporated Business Tax :  
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AFFIDAVIT OF MAILING

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Martin Hershkoff 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. Martin Hershkoff  
452 Beach 125 St.  
Rockaway Park, NY

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  
5th day of September, 1980.





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

September 5, 1980

Alois R. Eysler  
137 Parkway Dr.  
Roslyn, NY 11576

Dear Mr. Eysler:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Martin Hershkoff  
452 Beach 125 St.  
Rockaway Park, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ALOIS R. EYSLER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1968	:	
1969 and 1970.	:	

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Petitioner, Alois R. Eysler, 137 Parkway Drive, Roslyn, New York 11576, 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 1968, 1969 and 1970 (File No. 14249).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 14, 1980 at 2:45 P.M. Petitioner appeared with Martin Hershkoff. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the income derived from petitioners activities as a sales representative during the years 1968, 1969 and 1970 is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Alois R. Eysler, timely filed a joint New York State Income Tax Resident Return with his wife for the year 1968. Additionally, petitioner filed a New York State unincorporated business tax return for said year with respect to Regal Jewelry Co., a sole proprietorship which he operated. For the years 1969 and 1970 petitioner timely filed New York State combined income tax returns. He did not file unincorporated business tax returns for said years.

2. On April 14, 1972 the Audit Division issued a Statement of Audit Changes to petitioner wherein his income derived from his activities as a men's apparel salesman was held subject to the imposition of unincorporated business tax. Furthermore, an adjustment was made for personal income tax purposes whereby such tax was imposed on previously unreported 1968 Federal Audit Changes. Since this adjustment was not contested by petitioner, it is not at issue herein, although that portion of such changes attributable to those expenses claimed on petitioners Federal Schedule C were incorporated into the computation of unincorporated business tax for 1968. Accordingly, on April 14, 1972 a Notice of Deficiency was issued against petitioner asserting unincorporated business tax of \$3,853.20, personal income tax of \$533.94 and interest of \$597.69, for a total due of \$4,984.83.

3. Petitioner argued that he was a sales representative and the income derived from his business activities of selling men's apparel was exempt from the imposition of unincorporated business tax pursuant to section 703(f) of the Tax Law.

4. For the year 1968 petitioner reported income from two sole proprietorships; Regal Jewelry Co., a retailer of men's costume jewelry and gift items, and Robert Eysler Associates, petitioner's men's apparel business. The combined net income from both businesses was reported as "business income" and held subject to the unincorporated business tax.

5. During 1969 Regal Jewelry Co., was transformed into a partnership and accordingly filed partnership returns for the years 1969 and 1970. Robert Eysler Associates remained a sole proprietorship during said years.

6. During the years at issue petitioner sold men's shirts, sweaters, trousers and sport jackets for four principals. He worked a territory which was self-assigned and was compensated on a commission basis.

7. Nominal direction and control was exercised by petitioner's principals over his daily activities.

8. During the years at issue petitioner operated his men's apparel business from the office of Regal Jewelry Co., 366 Fifth Avenue, New York City.

9. Petitioner deducted all business expenses attributable to Robert Eysler Associates on the partnership returns of Regal Jewelry Co.

10. Petitioner employed at least one employee of Regal Jewelry Co. to assist him in his men's apparel business.

CONCLUSIONS OF LAW

A. That since petitioner maintained an office and employed one or more assistants in connection with his activities as a sales representative of men's apparel, his income derived from such activities does not qualify for exemption from unincorporated business tax within the meaning and intent of section 703(f) of the Tax Law.

B. That the activities engaged in by petitioner as a sales representative during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business pursuant to section 703(a) of the Tax Law and the income derived therefrom is subject to the imposition of unincorporated business tax within the meaning and intent of section 701(a) of the Tax Law.


C. That the petition of Alois R. Eysler is denied and the Notice of Deficiency dated April 14, 1972 is sustained together with such additional interest as may be lawfully owing.

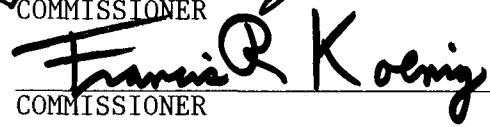
DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER