

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Joseph Busto, Jr. :

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 1965. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Joseph Busto, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Busto, Jr.
86 Carnot Ave.
Woodcliff, NJ 07675

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
20th day of February, 1981.

Annie R. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :

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Unincorporated Business Tax :

under Article 23 of the Tax Law

for the Year 1965. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Arthur N. Read 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. Arthur N. Read
Eisner, Levy, Steel & Bellman
351 Broadway
New York, NY 10013

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
20th day of February, 1981.

Carmie G. Hagelund

J. Vredenburg

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

February 20, 1981

Joseph Busto, Jr.
86 Carnot Ave.
Woodcliff, NJ 07675

Dear Mr. Busto:

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
Arthur N. Read
Eisner, Levy, Steel & Bellman
351 Broadway
New York, NY 10013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH BUSTO, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1965.	:	

Petitioner, Joseph Busto, Jr., 86 Carnot Avenue, Woodcliff, New Jersey 07675, 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 1965 (File No. 01197).

A formal hearing was held on March 19, 1979 at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before James T. Prendergast, Hearing Officer. Petitioner appeared by Eisner, Levy, Steel & Bellman, Esqs. (Arthur N. Read, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether the statute of limitations has run on the State's claim for unincorporated business taxes.

II. Whether petitioner, a salesman, was an employee not subject to unincorporated business taxes.

FINDINGS OF FACT

1. Petitioner, Joseph Busto, Jr., filed a timely New York State Income Tax Return for 1965. He did not file a New York State Unincorporated Business Tax Return for 1965.

2. On May 26, 1969, the Income Tax Bureau issued a Notice of Deficiency together with a Statement of Audit Changes against petitioner, Joseph Busto, Jr., for 1965 imposing unincorporated business tax of \$269.60, section 685(a) penalty of \$67.40, interest of \$50.36, for a total due of \$387.36.

3. Petitioner, Joseph Busto, Jr., was a women's bridal and formal wear salesman. He traveled about 20 weeks during the year. His principals and the income which he received from them were as follows:

Vene Gowns, Inc.	\$14,651.48
Mira Fashions	3,783.11
Bernelle Fashions, Inc.	<u>3,300.00</u>
TOTAL	\$21,734.59

4. Bernelle Fashions Inc., issued a wage and tax statement to petitioner and they withheld from his wages Federal and State income taxes and social security taxes. No wage statements were issued to him by Vene Gowns, Inc. and Mira Fashions. Mr. Busto paid self-employment tax.

5. Petitioner traveled 20 weeks a year and during the remaining 30 weeks he was required to work in the stockrooms and showrooms at Vene Gowns, Inc. and Bernelle Fashions, Inc. While traveling, he sold simultaneously for both Vene Gowns, Inc. and Bernelle Fashions, Inc. Mr. Busto testified that there was a division of his time and effort while working in the stockrooms and showrooms. However, no documentation or other evidence was submitted by Mr. Busto to show that there was a division of his time and effort between his principals.

6. Petitioner's, Joseph Busto, Jr., testimony in reference to Mira Fashions was confused and contradictory. He was not sure when or for how long he represented Mira Fashions. He testified that when Vene Gowns, Inc. discovered that he was representing Mira Fashions, they threatened to fire him unless he

dropped the line. However, Mr. Busto submitted no evidence or documentation from Vene Gowns to substantiate this.

7. Petitioner, Joseph Busto, Jr., did not belong to any pension plan of his principals. He was not covered by any hospitalization plan. He was not sure as to whether he was covered for workmen's compensation or disability insurance.

8. Petitioner testified that he was under close supervision of Vene Gowns, Inc. when he was traveling. He testified that his principals directed his sales activities. However, no evidence or documentation was submitted from his principals to substantiate his testimony.

CONCLUSIONS OF LAW

A. That the tax may be assessed at any time if no return is filed (Sections 722 and 683(c)(1)(A) of the Tax Law). The filing of a personal income tax return under the provisions of Article 22 of the Tax Law is immaterial when a Notice of Deficiency is issued for unincorporated business tax under Article 23 of the Tax Law. Since petitioner, Joseph Busto, Jr., did not file an unincorporated business tax return, the statute of limitations did not toll in accordance with sections 722 and 683(c)(1)(A) of the Tax Law.

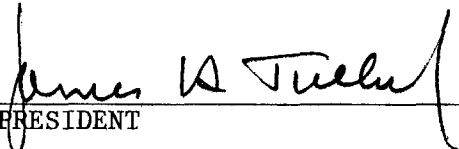
B. That petitioner, Joseph Busto, Jr., has failed to sustain his burden of proof imposed under sections 722 and 689(e) of the Tax Law to show that he was an employee of his principals. That petitioner's sales activities during 1965 constituted the carrying on of an unincorporated business in accordance with section 703(a) of the Tax Law and his income is subject to tax in accordance with section 701(a) of the Tax Law.


C. That the petition of Joseph Busto, Jr., is denied and the Notice of Deficiency issued May 26, 1969 is sustained.

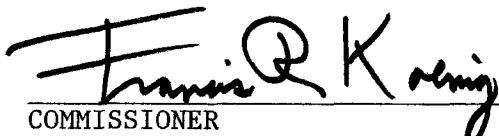
DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER