

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Meyer M. Reiner :

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 1966 - 1968. :

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 Meyer M. Reiner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Meyer M. Reiner  
2109 Matthews Ave.  
Bronx, NY 10462

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.

*Conrad G. Hagelund*

*J. Vredenburg*

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

February 20, 1981

Meyer M. Reiner  
2109 Matthews Ave.  
Bronx, NY 10462

Dear Mr. Reiner:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MEYER M. REINER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1966, 1967 and 1968.	:	

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Petitioner, Meyer M. Reiner, 2109 Matthews Avenue, Bronx, New York 10462, 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 1966, 1967 and 1968 (File No. 16514).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1980 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a manufacturer's representative constitutes the carrying on of an unincorporated business, the income from which is subject to the imposition of unincorporated business tax.

II. Whether petitioner's failure to file unincorporated business tax returns for 1966, 1967 and 1968 was due to on reasonable cause.

III. Whether petitioner filed a petition for 1969 and 1970.

FINDINGS OF FACT

1. Petitioner, Meyer Reiner, and Sylvia Reiner, his wife, filed a joint New York State income tax resident return for 1966 and combined New York State income tax resident returns for 1967, 1968, 1969 and 1970. Petitioner Meyer

Reiner filed an unincorporated business tax return for 1966, but did not file unincorporated business tax returns for 1967, 1968, 1969 and 1970.

2. On May 22, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioner, together with an explanatory Statement of Audit Changes for 1966, 1967 and 1968, asserting unincorporated business tax of \$1,612.77, section 685(a) penalty of \$391.34, interest of \$318.52, less a credit for overpayment of personal income tax of \$23.70, for a net amount due of \$2,298.93. The Notice of Deficiency and Statement of Audit Changes was issued on the basis that petitioner's activities as a manufacturer's representative was subject to unincorporated business tax.

3. On September 24, 1973, petitioner paid, under protest, the unincorporated business tax for 1966, 1967 and 1968, and which payment he now seeks to recover.

4. The attorney for the Audit Division, during the course of the hearing, introduced into evidence a Notice of Deficiency dated September 30, 1974, together with an explanatory Statement of Audit Changes issued against petitioner for 1969 and 1970, asserting unincorporated business tax of \$1,411.61, plus interest of \$360.57, for a total of \$1,772.61. Said Notice and Statement of Audit Changes was also issued on the basis that petitioner's activities as a manufacturer's representative was subject to unincorporated business tax.

5. Petitioner did not file a petition for 1969 and 1970.

6. Petitioner had been engaged as a distributor and manufacturers representative of plumbing supplies for a period in excess of thirty (30) years. During this period, which includes the years at issue, petitioner represented approximately twelve (12) principals concurrently.

Prior to November 26, 1966, petitioner conducted his activities in the form of a sole proprietor and reported, for unincorporated business tax, all

income derived from his activities as distributor and manufacturers representative.

On November 26, 1966, petitioner changed his method for reporting income. i.e. petitioner formed a corporation for the purpose of reflecting commissions earned as a distributor. The commissions earned by petitioner as a distributor represented sales made by petitioner where he billed a customer directly and controlled credit and terms of sale. The income which petitioner earned as a manufacturers representative, he continued to report as a sole proprietor.

None of the clients, whom petitioner represented as a manufacturers representative, reimbursed him for selling expenses, nor did they withhold income or FICA taxes. In addition, his principals did not provide him with either a pension or medical plan. Petitioner had no sick leave and he determined when he would take his vacation.

7. Petitioner allocated a portion of his home as a business office and maintained a separate telephone to conduct his business.

8. Petitioner, for years at issue, filed with the Internal Revenue Service, a Schedule C, Form 1040, for the income derived as a manufacturer's representative claiming various business expenses incurred in connection with his selling activities.

9. Petitioner did not file unincorporated business tax returns for subject years in reliance on a national trade publication and on the advice of his accountant.

#### CONCLUSIONS OF LAW

A. That petitioner's activities as a manufacturers representative for 1966, 1967 and 1968 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law, and that the income derived therefrom is subject to unincorporated business tax imposed under section 701(a) of the Tax Law.

B. That petitioner Meyer Reiner's failure to file unincorporated business tax returns for 1967 and 1968 was due to reasonable cause and not due to willful neglect and accordingly penalties asserted pursuant to section 685(a) of the Tax Law are to be cancelled. The Audit Division is directed to refund the payment for such penalties.

C. That petitioner Meyer Reiner did not file a petition for redetermination of the deficiency with the Tax Commission for 1969 and 1970. Therefore, there is no basis for jurisdiction by the Tax Commission to render a decision within the meaning and intent of section 689 of the Tax Law.

D. That the petition is granted to the extent set forth in Conclusion of Law "B", and that, except as so granted, the petition is in all other respects denied.

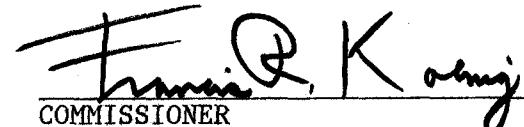
DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER