

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL KOSSOWER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 16 & 16-A of the
Tax Law for the (Year(s) 1956, 1957 :
and 1959

State of New York
County of Albany

Lynn Wilson , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 9th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon SAMUEL KOSSOWER

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

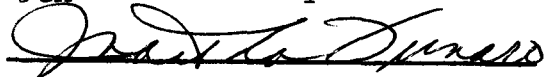
wrapper addressed as follows: Mr. Samuel Kossower
2751 Palm Aire Drive So.
Pompano Beach, Florida 33060

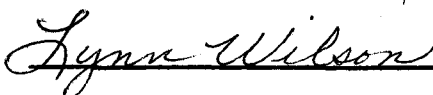
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

9th day of July , 1973.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 9, 1973

Mr. Samuel Kossower
2751 Palm Aire Drive So.
Pompano Beach, Florida 33060

Dear Mr. Kossower:

Please take notice of the **DETERMINATION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **sections 375 & 386j**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
SAMUEL KOSSOWER	:	DETERMINATION
for Revision or for Refund of Personal	:	
Income Taxes under Article 16 of the	:	
Tax Law and Unincorporated Business	:	
Taxes under Article 16-A of the Tax	:	
Law for the Years 1956, 1957 and 1959.	:	

Applicant, Samuel Kossower, has filed applications for revision or for refund of personal income taxes under Article 16 of the Tax Law and unincorporated business taxes under Article 16-A of the Tax Law for the years 1956, 1957 and 1959. (File Nos. B-746084, B-846532 and AB-049131). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, for April 25, 1973, at 9:15 A.M. Prior to the formal hearing, applicant advised the State Tax Commission, in writing, that he waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following determination after due consideration of said record.

ISSUE

Did the selling activities of applicant, Samuel Kossower, during the years 1956, 1957 and 1959 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Applicant, Samuel Kossower, filed New York State income tax resident returns for the years 1956, 1957 and 1959. He filed New York State unincorporated business tax returns for the years 1957 and 1959. He did not file a New York State unincorporated business tax return for the year 1956.

2. On February 25, 1960, the Income Tax Bureau issued a Notice of Additional Assessment against applicant, Samuel Kossower, imposing unincorporated business tax upon the income received by him from his sales activities during the year 1956 upon the grounds that said activities constituted the carrying on of an unincorporated business and assessed unincorporated business tax in the sum of \$387.96 and penalties in the sum of \$19.40. It also assessed additional personal income tax, resulting from unsubstantiated deductions, in the sum of \$280.00, which assessment is not uncontested by applicant.

3. On April 3, 1961, the Income Tax Bureau issued a Notice of Additional Assessment against applicant, Samuel Kossower, imposing for the year 1957 additional personal income tax in the sum of \$280.00 and additional unincorporated business tax in the sum of \$128.00 as a result of a disallowance of unsubstantiated deductions. Applicant does not contest the disallowance of unsubstantiated deductions, but claims a refund of unincorporated business tax paid for said year.

4. On April 10, 1961, the Income Tax Bureau issued a Notice of Additional Assessment against applicant, Samuel Kossower, imposing

for the year 1959 additional personal income tax in the sum of \$300.00 and additional unincorporated business tax in the sum of \$96.00 as a result of a disallowance of unsubstantiated deductions. Applicant does not contest the disallowance of unsubstantiated deductions, but claims a refund of unincorporated business taxes paid for said year.

5. During the years 1956, 1957 and 1959 applicant, Samuel Kossower, was a furniture salesman. He represented several unaffiliated firms in the sale of furniture. The products sold by him for each firm were noncompetitive. He used his home as an office. He did not have any employees. His territory consisted of the eastern seaboard.

6. During the years 1956, 1957 and 1959 the firms for whom applicant, Samuel Kossower, sold furniture did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. They did not cover him for workmen's compensation or unemployment insurance. He was not reimbursed for his business expenses. He deducted his business expenses from his gross commissions on his income tax returns. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

7. That during the years 1956, 1957 and 1959 applicant, Samuel Kossower, maintained an office in his home in New York. He did not have an office or a regular place of business outside

of New York State. He failed to submit proof as to the percentage of commissions earned within and without New York State during said years.

CONCLUSIONS OF LAW

A. That the income received by applicant, Samuel Kossower, from the firms that he represented during the years 1956, 1957 and 1959 constituted income from his regular business of selling furniture and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 386 of the Tax Law.

B. That the aforesaid activities of applicant, Samuel Kossower, during the years 1956, 1957 and 1959 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 386 of the Tax Law.

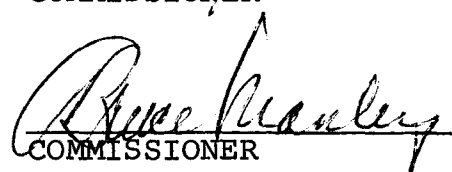
C. That applicant, Samuel Kossower, failed to prove that he was entitled to an allocation of business income for the years 1956, 1957 and 1959 as provided for in section 386g of the Tax Law.

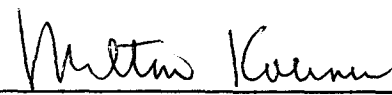
D. That the applications of Samuel Kossower are denied, his claims for refund for the years 1957 and 1959 are denied, and the notices of additional assessment dated February 25, 1960, April 3, 1961, and April 10, 1961, are sustained.

DATED: Albany, New York
July 9, 1973

STATE TAX COMMISSION

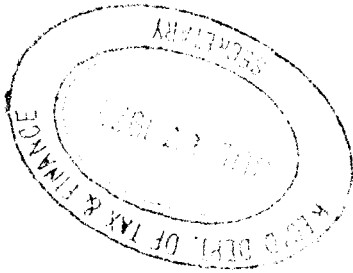

COMMISSIONER


COMMISSIONER


COMMISSIONER

AD 32 (10-71) 50M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227



Carrier 10000 CO. 121

MAIL DELIVERED
OF APT. 10000 CO. 121

Mr. Samuel Kossower
2751 Palm Aire Drive So.
Pompano Beach, Florida 33060

Insurance
No such insurance state
not remain in this envelope



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

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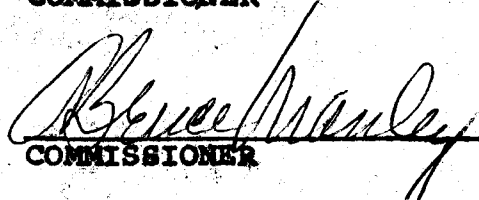
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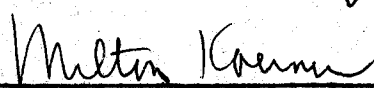
D. That the applications of Samuel Kossower are denied, his claims for refund for the years 1957 and 1959 are denied, and the notices of additional assessment dated February 25, 1960, April 3, 1961, and April 10, 1961, are sustained.

DATED: Albany, New York
July 9, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

DEFAULT ORDER VACATED-----

SEE ATTACHED MEMORANDUM

7/11/73