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QUALITY  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME KRAMER and ROSLYN KRAMER :

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income and Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the (Year(s) 1962, 1963, :  
1964 and 1965.

State of New York  
County of Albany

Martha Funaro , 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 31st day of January , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Jerome Kramer and  
Roslyn Kramer (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

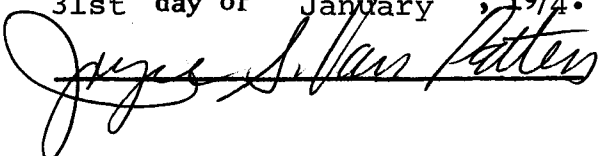
Mr. & Mrs. Jerome Kramer  
2420 Cadillac Drive  
East Meadow, L.I., New York 11554

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

31st day of January , 1974.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JEROME KRAMER and ROSLYN KRAMER :

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income and Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1962, 1963, :  
1964 and 1965.

State of New York  
County of Albany

Martha Funaro , 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 31st day of January , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Eugene V.

Weissman, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

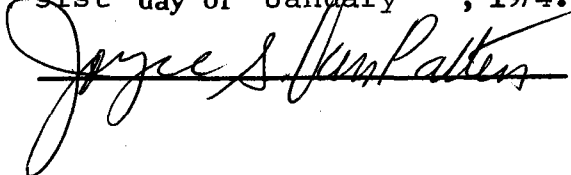
Eugene V. Weissman, Esq.  
477 Madison Avenue  
New York, New York 10022

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

31st day of January , 1974.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME KRAMER and ROSLYN KRAMER

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income and Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1968.

State of New York  
County of Albany

Martha Funaro, 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 31st day of January, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Robert S.

Raum, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Robert S. Raum, Esq.  
210 East 52nd Street  
New York, New York

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

31st day of January, 1974

James S. Van Patten

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
Mario A. Procaccino

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
**January 30, 1974**

**Mr. & Mrs. Jerome Kramer**  
**2420 Cadillac Drive**  
**East Meadow, L.I., New York 11554**

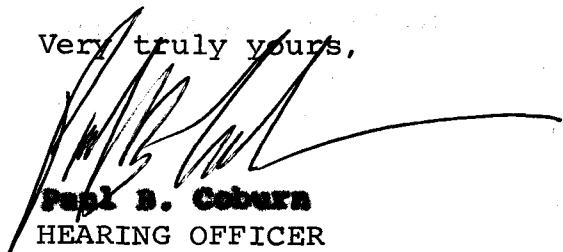
**Dear Mr. & Mrs. Kramer:**

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

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JEROME KRAMER and ROSLYN KRAMER	:	
for Redetermination of Deficiency	:	DECISION
or for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law	:	
for the Years 1962, 1963, 1964 and	:	
1965.	:	
	:	

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Petitioners, Jerome Kramer and Roslyn Kramer, have filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1962, 1963, 1964 and 1965. (File No. 46755622). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 18, 1973, at 1:15 P.M. Petitioners appeared by Eugene V. Weissman, Esq., and Robert S. Raum, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUES

I. Did petitioner, Jerome Kramer's activities as a gift-ware salesman during the years 1962, 1963, 1964 and 1965, constitute the carrying on of an unincorporated business?

II. Did petitioner, Jerome Kramer, have reasonable cause for failure to file New York State unincorporated business tax

returns for the years 1963, 1964 and 1965?

FINDINGS OF FACT

1. Petitioners, Jerome Kramer and Roslyn Kramer, filed New York State income tax resident returns for the years 1962, 1963, 1964 and 1965. Petitioner, Jerome Kramer, filed a New York State unincorporated business tax return for the year 1962.

2. On June 30, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Jerome Kramer and Roslyn Kramer, imposing unincorporated business tax in the total sum of \$1,588.00, upon the income received by petitioner, Jerome Kramer, as a salesman during the years 1962, 1963, 1964 and 1965. It also imposed a penalty in the total sum of \$397.00 for failure to file New York State unincorporated business tax returns for said years. It further imposed additional personal income tax in the sum of \$307.67 for the years 1963, 1964 and 1965 as a result of a Federal audit. Petitioners are not contesting the imposition of said additional personal income tax. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,801.04.

3. Petitioner, Jerome Kramer, was a giftware salesman during the years 1962, 1963, 1964 and 1965. He represented The Haeger Potteries, Inc. and its affiliates and Harris and Mallow Products, Inc., and its affiliates in the sale of giftware. The items sold for each principal were not competitive. He did not have any employees.

4. During the years 1962, 1963, 1964 and 1965, The Haeger Potteries, Inc. and its affiliates withheld Federal income and

social security taxes from the commissions paid to petitioner, Jerome Kramer. They covered him for workmen's compensation. During said years, Harris and Mallow Products, Inc. and its affiliates 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 disability insurance. Neither of his principals reimbursed him for his business expenses, except for certain trade show expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns. The principals for whom he sold merchandise did not exercise any substantial control and supervision over his sales activities and techniques or over the time he devoted to sales except to limit the territory in which he could sell.

5. Petitioner, Jerome Kramer, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1963, 1964 and 1965.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Jerome Kramer, from the firms that he represented during the years 1962, 1963, 1964 and 1965 constituted income from his regular business of selling giftware and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Jerome Kramer, 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 703 of the Tax Law.

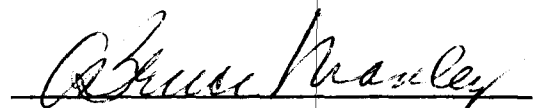
C. That petitioner, Jerome Kramer, filed a New York State unincorporated business tax return for the year 1962 and had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1963, 1964 and 1965, and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.


D. That the petition of Jerome and Roslyn Kramer is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1962, 1963, 1964 and 1965 in the sum of \$397.00; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued June 30, 1969; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
January 31, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER