

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FRED KASS

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

For a Redetermination of a Deficiency or
a Refund of **Unincorporated Business** :
Taxes under Article (s) 23 of the
Tax Law for the Year (s) 1968. :

State of New York
County of Albany

Katherine D. Manly, 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 16th day of April, 1975, she served the within
Notice of Decision (~~xxx~~) by (certified) mail upon Fred Kass

~~(representative of the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Fred Kass
111-46 76th Drive
Forest Hills, New York 11315

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 the)~~
~~xxx~~ 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

16th day of April, 1975.

Katherine D. Manly

Janet Mack



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

~~SAUL WEISSMAN, Acting President~~

~~NORMAN F. GALLMAN, [REDACTED]~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 16, 1973

Mr. Fred Kass
111-46 76th Drive
Forest Hills, New York 11315

Dear Mr. Kass:

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

Please take further notice that pursuant to
Section(s) **722** 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: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRED KASS : DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1968.

Petitioner, Fred Kass, residing at 111-46 76th Drive, Forest Hills, New York 11315, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1968. (File No. 8-14392926). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 26, 1975, at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did the activities of petitioner, Fred Kass, as a ladies wear salesman during the year 1968 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Fred Kass, filed a New York State income tax resident return for the year 1968. He did not file a New York State unincorporated business tax return for said year.

2. On December 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Fred Kass, imposing unincorporated business tax in the sum of \$993.63 upon the income received by him from his activities as a salesman during the year 1968. It also imposed a penalty in the sum of \$248.41 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$1,284.07.

3. During the year 1968, petitioner, Fred Kass, was a ladies wear salesman. He represented three unaffiliated firms in the sale of said items. The products sold by him for each firm were noncompetitive. He did not have any employees.

4. During the year 1968, the firms for whom petitioner, Fred Kass, sold ladies wear 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 insurance. They did not reimburse him for any of his business expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax return. He reported his commission income as "Business income" on his New York State resident income tax return. The firms for whom he sold merchandise did not exercise any substantial control or 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.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Fred Kass, from the firms that he represented during the year 1968 constituted income from his regular business of selling ladies wear 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, Fred Kass, during the year 1968 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 the petition of Fred Kass is denied and the Notice of Deficiency issued December 29, 1969, is sustained.

DATED: Albany, New York

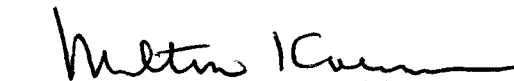
STATE TAX COMMISSION

April 16, 1975

PRESIDENT



COMMISSIONER



COMMISSIONER