

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL GOLDSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(8)~~ 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1969, 1970 and 1971.

State of New York  
County of Albany

Bruce Batchelor , 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 28th day of February , 1977, she served the within  
Notice of Decision by (certified) mail upon Michael  
Goldstein ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Michael Goldstein  
11 Hedgerow Lane  
Jericho, New York 11753

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

28th day of February , 1977.

Bruce Batchelor

STATE OF NEW YORK  
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :  
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1969, 1970 and 1971

State of New York  
County of Albany

Bruce Batchelor, 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 28th day of February, 1977, she served the within  
Notice of Decision by (certified) mail upon Marvin Zucker  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Marvin Zucker  
474 Charles Avenue  
Massapequa Park, New York 11762  
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

28th day of February, 1977.

Bruce Batchelor

[Signature]



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

February 28, 1977

TELEPHONE: (518) 457-1723

Mr. Michael Goldstein  
11 Hedgerow Lane  
Jericho, New York 11753

Dear Mr. Goldstein:

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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

**PAUL B. COBURN**  
SUPERVISING TAX  
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 27, 1976 at 9:00 A.M. Petitioner appeared by Marvin Zucker, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

## ISSUE

Whether the business activities of petitioner, Michael Goldstein, as a sales representative, constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. On October 29, 1973, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Michael Goldstein, imposing unincorporated business tax upon income drawn from his activities as a sales agent for the years 1969, 1970 and 1971. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$8,864.68.

2. For the years in issue, petitioner, Michael Goldstein was a sales representative whose income was solely derived from commissions. Eighty percent of his income was received from the Phoenix Slipper Co., Secaucus, New Jersey and twenty percent from the Nohel Manufacturing Corp., Providence, Rhode Island. Products of these companies were non-competitive.

3. Phoenix Slipper Co. deducted a percentage of petitioner, Michael Goldstein's commissions for the space in Secaucus, New Jersey used by him as an office and warehouse, and in New York, New York used as a showroom. This amounted to \$10,000.00 in 1971. He received no benefits for hospitalization or pension programs. He filed Federal and State estimated tax returns, a Federal Schedule C and a "Computation of Social Security Self-Employment Tax" during the years 1969, 1970 and 1971. In 1971, he filed a "Statement in Support of Deduction for Contributions made on Behalf of Self-Employed Individuals to Pension and Profit Sharing Plans".

He received nothing for expenses incurred, and he deducted said expenditures on his returns. When necessary, petitioner hired and paid for his assistants. His selling territory was unrestricted. 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 that was devoted to sales.

4. Petitioner, Michael Goldstein, was advised by his accountants that he was not required to file unincorporated business tax returns for the years in issue.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Michael Goldstein, from the Phoenix Slipper Company and the Nohel Manufacturing Corp. constituted income from his regular business as a sales representative and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

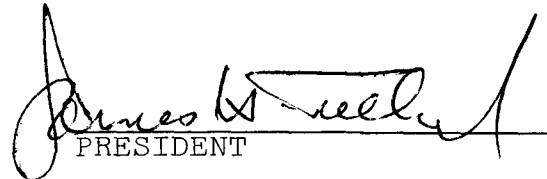
B. That the aforesaid activities of petitioner, Michael Goldstein, during the years 1969, 1970 and 1971, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Michael Goldstein had reasonable cause for failing to file unincorporated business tax returns for the years 1969, 1970 and 1971.

D. That the petition of Michael Goldstein is granted to the extent that the penalty is waived; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued October 29, 1973; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
February 28, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER