

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

MORRIS REISER and SYLVIA REISER

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income and  
Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~or Period(s)~~  
1965, 1966, 1967, 1968, 1969 and 1970.

State of New York  
County of Albany

John Huhn, 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 25th day of August, 1978, she served the within  
Notice of Decision by (certified) mail upon Morris & Sylvia Reiser

(~~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. Morris Reiser  
5420 15th Avenue, Apt. 2-B  
Brooklyn, New York 11219

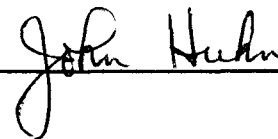
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

25th day of August, 1978.







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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**August 25, 1978**

**Mr. & Mrs. Morris Reiser  
5420 15th Avenue, Apt. 2-B  
Brooklyn, New York 11219**

**Dear Mr. & Mrs. Reiser:**

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) **690 and 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty  
Hearing Examiner**

cc: ~~Petitioner's Representative~~  
~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
MORRIS REISER and SYLVIA REISER : DECISION  
for Redetermination of a Deficiency or:  
for Refund of Personal Income and  
Unincorporated Business Taxes under :  
Articles 22 and 23 of the Tax Law for  
the Years 1965, 1966, 1967, 1968, 1969:  
and 1970. :

---

Petitioners, Morris and Sylvia Reiser, 5420 15th Avenue,  
Apt. 2-B, Brooklyn, New York 11219, filed a petition for  
redetermination of a deficiency or for refund of personal income  
and unincorporated business taxes under Articles 22 and 23 of  
the Tax Law for the years 1965 through 1970 (File No. 00330).

A small claims hearing was held before Harry Huebsch,  
Hearing Officer, at the offices of the State Tax Commission, Two  
World Trade Center, New York, New York, on September 26, 1977 at  
2:45 P.M. Petitioner Morris Reiser appeared pro se and for his  
wife, petitioner Sylvia Reiser. The Income Tax Bureau appeared  
by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

I. Whether petitioner Morris Reiser's selling activities during the years 1965 through 1970 constituted the carrying on of an unincorporated business and whether the income derived therefrom was subject to unincorporated business tax.

II. Whether penalties pursuant to section 685(a), 685(a)(1), 685(a)(2), and 685(b) of the Tax Law were properly asserted against petitioners.

FINDINGS OF FACT

1. Petitioners, Morris Reiser and Sylvia Reiser, timely filed New York State personal income tax returns for the years 1965 through 1970, on which petitioner Morris Reiser indicated his occupation as "self-employed" and also that his business income was derived from activities as a "sales agent - men's shirts". Unincorporated business tax returns were not filed for said years.

2. The Income Tax Bureau contended that petitioner Morris Reiser's income from his activities as a sales agent was subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued September 25, 1972 for the years 1965, 1966 and 1967 in the amount of \$867.54 in unincorporated business tax, plus \$33.47 in penalty (pursuant to section 685(b) of the Tax Law for the years 1965 and 1966) and \$288.56 in interest, for a total due of \$1,189.57. A Notice of Deficiency was issued February 25, 1974 for the years 1968, 1969 and 1970 in the amount

of \$1,613.05 in unincorporated business tax, plus \$568.25 in penalties (pursuant to section 685(a) of the Tax Law for 1968 and sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1969 and 1970) and \$398.11 in interest, for a total due of \$2,579.41.

3. The Internal Revenue Service audited petitioners personal income tax returns for the years 1965, 1966, 1967 and 1968 and made certain adjustments. The Income Tax Bureau issued statements of audit changes to conform with the Federal adjustments. It issued a Notice of Deficiency for the years 1965, 1966 and 1967 in the amount of \$1,008.62 in personal income tax, plus \$41.43 in penalty (pursuant to section 685(b) of the Tax Law for the years 1965 and 1966) and \$333.62 in interest, for a total due \$1,383.67. A Notice of Deficiency was issued February 25, 1974 for the year 1968 in the amount of \$574.12 in personal income tax, plus \$167.44 in interest, for a total due of \$741.56.

4. Petitioners conceded the accuracy and validity of the notices of deficiency issued for personal income tax purposes as described in Finding of Fact "3", and said notices are not at issue.

5. No evidence was submitted by petitioners regarding the penalty imposed pursuant to section 685(b) of the Tax Law.

6. Petitioner Morris Reiser sold men's shirts for one principal during the years 1965 through 1970. He was not permitted to work for any other principal. He was compensated on a commission basis and was not reimbursed for any expenses. Taxes and social security were not withheld from his compensation and

he received no fringe benefits. The only control over his activities was with regard to territory and sales results.

7. Petitioner Morris Reiser filed Federal schedules "C" to claim his expenses. He used a small part of his home as an office. He had his own stationery which identified him as a manufacturer's representative and used his home address and telephone number for business reply purposes. Petitioner did not have to report his whereabouts to his principal or make out sales reports.

8. Petitioner Morris Reiser relied on the advice of his accountant for the proper filing of his returns.

#### CONCLUSIONS OF LAW

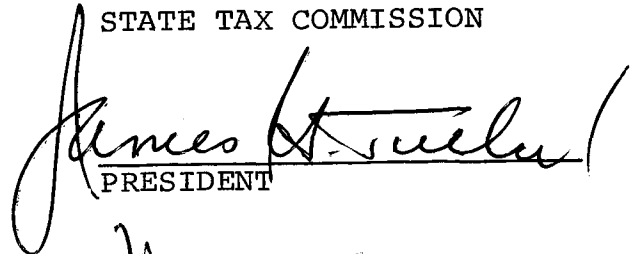
A. That the selling activities of petitioner Morris Reiser during the years 1965 through 1970 constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

B. That a penalty pursuant to section 685(b) of the Tax Law was properly asserted and is, therefore, sustained; that petitioner Morris Reiser's failure to file unincorporated business tax returns for the years at issue was due to reasonable cause, rather than willful neglect. Therefore, the penalties asserted pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law are cancelled; the Income Tax Bureau is hereby directed to

so modify the Notice of Deficiency issued February 25, 1974 against Morris Reiser for the years 1968, 1969 and 1970, and that, except as so granted, the petitions of Morris and Sylvia Reiser are in all other respects denied.

DATED: Albany, New York  
August 25, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER