

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BERNARD BERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated:Business :
Taxes under Article(s) 22 & 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 12th day of May , 1977, she served the within
Notice of Decision by (certified) mail upon Morris Nadjar
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morris Nadjar
1618 Avenue V
Brooklyn, NY 11229

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

12th day of May , 1977.

Bruce Batchelor

Janet Maes

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 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
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 12th day of May, 1977, he served the within
Notice of Decision by (certified) mail upon Bernard Berman

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Bernard Berman
649 East 77th Street
Brooklyn, New York 11236

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
12th day of May, 1977

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

May 12, 1977

TELEPHONE: (518) ~~457-1723~~

Mr. Bernard Berman
649 East 77th Street
Brooklyn, New York 11236

Dear Mr. Berman:

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

Please take further notice that pursuant to
Section(s) **690 and 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,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 BERNARD BERMAN :
 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 1969, 1970 and 1971. :

Petitioner, Bernard Berman, residing at 649 East 77th Street, Brooklyn, New York 11236, has 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 1969, 1970 and 1971 (File No. 14048).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on January 27, 1977 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Morris Nadjar, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Was the income derived from petitioner, Bernard Berman's activities as a sales representative during the years 1969, 1970 and 1971 subject to the unincorporated business tax?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During the years 1969, 1970 and 1971, petitioner, Bernard Berman, was a sales representative. During the years 1969 and 1970, he sold for more than one principal and during the year 1971 he sold for only one principal.

2. The firms for whom petitioner, Bernard Berman, sold did not exercise supervision or control over his activities. At all times during the years at issue, he was free to work for other principals.

3. The firms for whom petitioner, Bernard Berman, sold did not withhold Federal or New York State withholding taxes and social security tax from the commissions paid to him.

4. Petitioner, Bernard Berman, was not reimbursed for expenses incurred in connection with his sales activities.

5. Petitioner, Bernard Berman, participated in the Keogh Plan, a retirement plan for self-employed individuals.

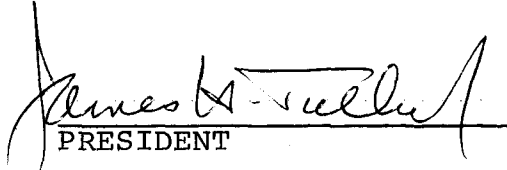
6. The income petitioner, Bernard Berman, received during 1969, 1970 and 1971 was earned as an independent contractor and not as an employee.

7. The income received by petitioner, Bernard Berman, during 1969, 1970 and 1971 is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

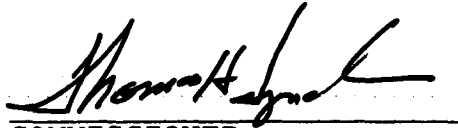
8. The petition of Bernard Berman is denied and the Notice of Deficiency issued against him on August 26, 1974 in the sum of \$4,170.85 is sustained.

DATED: Albany, New York
May 12, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) ~~SMALL~~ CLAIMS
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

~~Mr. Bernard Berman~~
~~649 East 77th Street~~
~~Brooklyn, New York 11236~~

X

10/1/77

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 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 31st day of May, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Bernard Berman

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Bernard Berman
4050 N.W. 42nd Avenue
Lauderdale Lakes, Florida

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)~~
~~XXXX~~ 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 May, 1977.

Bruce Batchelor

Janet Mack