

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPHINE HUGHES

AFFIDAVIT OF MAILING

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)~~
1970 & 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 24th day of March, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Josephine Hughes

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

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

Ms. Josephine Hughes
41 West 58th Street
New York, New York 10019

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

24th day of March, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPHINE HUGHES

AFFIDAVIT OF MAILING

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)~~
1970 & 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 24th day of March, 1977, he served the within
Notice of Decision by (certified) mail upon Jack C. Bonderow, CPA

(representative of) the petitioner in the within proceeding,

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

Jack C. Bonderow, CPA
274 Madison Avenue
New York, New York 10019

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

24th day of March, 1977.

Bruce Batchelor

Janet Marsh



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

March 24, 1977

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

Ms. Josephine Hughes
41 West 58th Street
New York, New York 10019

Dear Ms. Hughes:

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

Please take further notice that pursuant to
Section(s) **690 & 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 :
JOSEPHINE HUGHES :
for Redetermination of a Deficiency or : DECISION
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1970 and 1971. :

Petitioner, Josephine Hughes, residing at 41 West 58th Street, New York, New York 10019, has filed a petition for redetermination of a deficiency or for refund of personal and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1970 and 1971 (File No. 1-76981771).

A small claims hearing was held before Joseph Marcus, Hearing Officer, on August 19, 1976 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 Jack C. Bonderow, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq., of counsel).

ISSUES

I. Did petitioner's activities as a stylist, salesperson, publicist and consultant during the year 1970 constitute the carrying on of an unincorporated business or were such activities services rendered as an employee?

II. Did petitioner have reasonable cause for failure to file a 1970 New York State unincorporated business tax return and pay the tax due thereon?

FINDINGS OF FACT

1. Petitioner, Josephine Hughes, filed New York State income tax returns (IT-201) for the years 1970 and 1971. She listed thereon the compensation she received from four firms for which she rendered services in said years. The returns were prepared by her accountant.

2. On September 29, 1975, the Income Tax Bureau issued a Statement of Audit Changes incorporating certain Federal adjustments for the years 1970 and 1971. In addition, the Income Tax Bureau imposed unincorporated business tax for the year 1970. In connection therewith, the Income Tax Bureau issued a Notice of Deficiency on September 29, 1975, for \$1,665.63 comprising personal income and unincorporated business tax. In addition thereto, penalties and interest of \$1,172.02 were asserted.

3. Petitioner has not protested the personal income tax which was assessed as a result of a Federal audit.

4. During the year 1970, petitioner, Josephine Hughes, received commission income from Bergdorf Goodman Co. of \$28,622.91 for her sales and for her activities as a stylist. Petitioner also earned \$7,600.00 from Work Wear Corporation, \$4,113.00 from David Webb Corporation and \$4,031.17 from the Pierre Hotel for public relations services and consulting services which she performed evenings or on weekends at her home or wherever required. Petitioner had no employees.

5. In a letter dated May 27, 1975, Richard L. Silva, Vice-President of Finance and Administration, Bergdorf Goodman, stated that petitioner was a full-time employee of Bergdorf Goodman. Mr. Silva further stated that petitioner "may be required from time to time to travel and to entertain." She was paid a commission on sales that she developed. It was expected that petitioner would, from time to time, wear and model the clothes she was to sell. It was also anticipated that petitioner would conduct fashion shows and make other public appearances from time to time at which she would represent Bergdorf Goodman. The expenses for such activities were to be borne by petitioner without remuneration.

6. With respect to petitioner's sales for Bergdorf Goodman Co. and her activities as a stylist on behalf of Bergdorf Goodman Co., petitioner had a large following of wealthy customers who she would take to well known clothing manufacturing firms on 7th Avenue and elsewhere in New York City to show the clothing and styles thereof available. Petitioner would recommend suitable styles of clothing to the customer, obtain an order from the customer, place the order with Bergdorf Goodman Co. which would then buy such clothing from the manufacturer and pay the petitioner a commission based upon the sale. Space designated with the listing "Ask Jo Hughes" was set aside on the second floor of the Bergdorf Goodman department store in New York City so petitioner could sell and perform her activities as a stylist.

In addition, the cost of one way transportation to Paris, France, was provided to petitioner by Bergdorf Goodman Co. so petitioner could study the Paris fashions. The cost of this transportation was negotiated between Bergdorf Goodman Co. and petitioner.

7. Bergdorf Goodman Co. and Work Wear Corporation deducted withholding taxes and social security taxes from petitioner's compensation for 1970 but David Webb Corporation and the Pierre Hotel did not make such deductions from her earnings. She did not have an employment contract with any of these organizations.

8. Petitioner did not file a 1970 New York State unincorporated business tax return because she was advised by her accountant that such return was not required.

CONCLUSIONS OF LAW

A. That petitioner, Josephine Hughes, has not shown that any of the principals she represented during 1970 exercised sufficient direction and control over her activities and techniques or over the time she devoted thereto to have constituted an employer-employee relationship notwithstanding the fact that Bergdorf Goodman Co. and Work Wear Corporation deducted withholding and social security taxes from her compensation.

B. That petitioner's activities as a stylist, salesperson, publicist and consultant constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law and the income received from such activities during the year 1970 was subject to unincorporated business tax.

C. That petitioner had reasonable cause for failure to file a 1970 New York State unincorporated business tax return and, therefore, the penalties imposed with respect thereto under sections 685(a)(1) and 685(a)(2) of the Tax Law for 1970 are hereby waived.


D. That the petition of Josephine Hughes is granted to the extent of cancelling the penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1970; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued September 29, 1975 and to correct the amount shown as a deficiency in this document for 1970 to read \$2,420.47 and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

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Inquiries concerning the computation of tax
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decision or concerning any other matter relative
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will be referred to the proper party for reply.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frank J. Puccia".

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

SMALL CLAIMS
TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Ms. Josephine Hughes
41 West 58th Street
New York, New York 10019

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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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JOSEPHINE HUGHES :
for Redetermination of a Deficiency or :
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