

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY REIDER

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) 1967. :

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

State of New York  
County of Albany

Lynn Wilson , 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 21st day of August , 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon HENRY REIDER

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Henry Reider  
200 Valentine Lane  
Yonkers, New York 10705

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) 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

21st day of August , 1972.

Maitha Funnaro

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

HENRY REIDER

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) 1967

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State of New York  
County of Albany

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age, and that on the 21st day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon JOEL ROTHSTEIN, ESQ.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joel Rothstein, Esq.  
c/o Hanigsburg, Delson and Broser  
711 Fifth Avenue  
New York, New York 10022

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) 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

21st day of August , 1972.

Maitha Flunato

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**August 21, 1972**

**Mr. Henry Reider**  
**200 Valentine Lane**  
**Yonkers, New York 10705**

**Dear Mr. Reider:**

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

Please take further notice that pursuant to **section 722 of**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
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 relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

HENRY REIDER :

DECISION

for a Redetermination of a Deficiency :  
or for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the Year 1967. :

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Henry Reider filed a petition for a redetermination of a deficiency issued under date of February 24, 1970, for unincorporated business taxes under Article 23 of the Tax Law for the year 1967.

A hearing was duly held at the offices of the State Tax Commission, 80 Centre Street, New York City, on March 6, 1972, before Nigel G. Wright, Hearing Officer.

Joel Rothstein, C.P.A., represented petitioner. Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq., represented the Income Tax Bureau.

The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether the petitioner, a salesman, is subject to unincorporated business tax.

#### FINDINGS OF FACT

1. Petitioner is a resident of Yonkers, New York, and he is a salesman. During 1967 he represented two principals; Rosenau Brothers, Inc. and Nannette Manufacturing Co., Inc., both of

Philadelphia, Pennsylvania. Rosenau Brothers, Inc. makes girls dresses and is controlled by three members of the Rosenau family. Nannette Manufacturing Co., Inc. makes infant and toddler dresses and is controlled by two members of the Rosenau family who have no interest in Rosenau Brothers, Inc. Both firms have a joint sales office in New York City. All salesmen of one company are simultaneously salesmen of the other company. They cannot represent any other line. Petitioner's territory is Connecticut, Rhode Island and major cities in upstate New York. He travels four times a year for about four weeks each. When not traveling he reports to the New York City office.

2. Petitioner works on the basis of a straight commission on goods delivered less returns and allowances. His commissions were \$34,000.00 from Rosenau Brothers, Inc. and \$27,000.00 from Nannette Manufacturing Co., Inc. He pays all of his own expenses which totaled about \$20,000.00 for the year and includes \$1,200.00 paid to a "sales assistant". This assistant was hired to handle luggage and displays on trips because of Mr. Reider's age and health. The assistant did no selling.

3. Both Rosenau Brothers, Inc. and Nannette Manufacturing Co., Inc. withheld Federal and New York State income taxes and social security from compensation paid petitioner. They cover him for workmen's compensation unemployment insurance and pension. They have a mandatory retirement age of 65.

#### CONCLUSIONS OF LAW

Petitioner is exempt from tax. On the basis of all the evidence, he is clearly an employee and not an independent contractor. Of

greatest significance in the context of these facts is the prohibition against carrying other lines and the status of petitioner for unemployment insurance, workmen's compensation, social security and pension purposes.

Although he works for two separate corporations, the close relation of those in control of these corporations insure that there is no conflict concerning who has a right to control petitioner's activities. Also the fact that petitioner hires an assistant, in the context of all the facts herein, is entitled to very little weight in rebutting an employee status. (See Tax Law section 703(f).)

DECISION

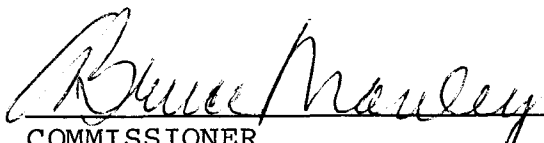
The petition is granted and the deficiency is cancelled in its entirety.

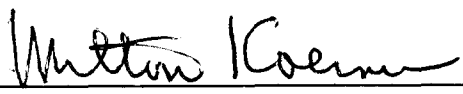
DATED: Albany, New York

*August 21, 1972.*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER