

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Max J. Schacknow

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) 1965, 1966 &
1967

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

State of New York
County of Albany

Martha Funaro, 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 27th day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Max J. Schacknow

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Max J. Schacknow
628 East 79th Street
Brooklyn, New York

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

27th day of March, 1972.

Paul J. [Signature]

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX J. SCHACKNOW

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
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Tax Law for the (Year(s) 1965, 1966 & :
1967

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County of Albany

Martha Funaro , 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 27th day of March , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving Schlusselberg,
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irving Schlusselberg, Esq.
65-31 171st Street
Flushing, New York 11365

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

27th day of March , 1972

Rae Pennington

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 27, 1972

**Max J. Schacknow
628 East 79th Street
Brooklyn, New York**

Dear Mr. Schacknow:

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,

Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MAX J. SCHACKNOW	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1965, 1966 and 1967.	:	

Petitioner, Max J. Schacknow, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 72201691). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on July 14, 1971, at 1:20 P.M. Petitioner appeared by Irving Schlusselberg, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Were the services rendered by petitioner, Max J. Schacknow, during the years 1965, 1966 and 1967, as an officer of Bermac Textiles, Inc. so interrelated and integrated with his activities in connection with his unincorporated business as a textile representative as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, Max J. Schacknow, filed New York State unincorporated business tax returns for the years 1965, 1966 and 1967.

He reported as net income from business the income he received from his activities as a textile representative, but omitted from net income the salary he received from Bermac Textiles, Inc.

2. On April 11, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Max J. Schacknow, imposing unincorporated business tax upon the salary received by him from Bermac Textiles, Inc. during the years 1965, 1966 and 1967. It also imposed additional personal income tax for the years 1965 and 1966 in the total sum of \$39.87, which item is not being contested by petitioner. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$1,651.31.

3. During the years 1965, 1966 and 1967, petitioner, Max J. Schacknow, conducted an unincorporated business as a textile representative. He sold men's shirting fabrics for various jobbers and manufacturers. He was paid on a commission basis by the sellers. He did not maintain any inventory. His net income from his sales activities as a textile representative was \$13,991.42 in 1965, \$14,248.50 in 1966 and \$14,388.83 in 1967.

4. During the years 1965, 1966 and 1967, Bermac Textiles, Inc. was a textile jobber. It purchased bulk piece goods from mills. It then cut the piece goods and sold and shipped them to manufacturers, principally in the ladies' wear industry. The corporation maintained a large inventory of piece goods. It had accounts receivable, accounts payable and loans outstanding. The corporation and the unincorporated business were located on different floors in the same building. They had the same telephone number. They had separate bank accounts and stationery.

5. During the years 1965, 1966 and 1967, petitioner Max J. Schacknow, was also president and the owner of 65% of the stock of Bermac Textiles, Inc. He received salary and bonuses from the corporation of \$5,700.00 in 1965, \$11,560.00 in 1966 and \$23,522.97 in 1967. Federal and New York State income taxes and social security taxes were withheld by the corporation from the compensation paid to him. He reflected this income as wages on his New York State income tax returns. Gloria Abrams and Harry Schacknow, petitioner's brother, owned the balance of the stock. They were also officers of the corporation. They received compensation in proportion to the compensation paid to petitioner, Max J. Schacknow. Petitioner, Max J. Schacknow, was the purchasing agent and financial advisor for the corporation. The other two principals acted as sales representatives. On those occasions that he made sales on behalf of the corporation, he received a commission on said sales which was paid to the unincorporated business. His mornings were generally devoted to selling activities on behalf of the unincorporated business and his afternoons were generally devoted to office activities for the corporation.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Max J. Schacknow, during the years 1965, 1966 and 1967, as an officer of Bermac Textiles Inc. were not so integrated and interrelated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him and, therefore, the salary received by him as an officer of said corporation was exempt from the

imposition of the 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, Max J. Schacknow, as an officer of Bermac Textiles, Inc., during the years 1965, 1966 and 1967, did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Max J. Schacknow is granted to the extent of cancelling the Statement of Audit Changes dated April 11, 1969, as it relates to additional unincorporated business tax due in the sum of \$1,472.09 and the Notice of Deficiency issued April 11, 1969, is reduced from \$1,651.31 to \$45.58 together with such interest as may be due from April 11, 1969, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

March 27, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Mackley

COMMISSIONER

Milton Koerner

COMMISSIONER