

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH HELMRICH

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) 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 23rd day of July , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Joseph Helmrich

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joseph Helmrich  
Evergreen Row, Windmill Farm  
Armonk, 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

23rd day of July , 1973

Joseph S. Van Patten

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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Taxes under Article(s) 23 of the  
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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of July , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Barnet H. Goldberg

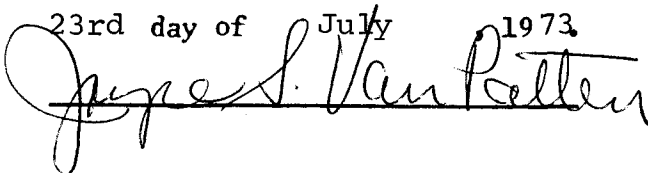
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Barnet H. Goldberg  
342 Madison Avenue  
New York, New York

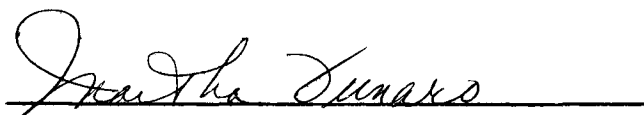
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23rd day of July , 1973







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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ~~President~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 23, 1973

Joseph Helmrich  
Evergreen Row, Windmill Farm  
Armonk, New York

Dear Mr. Helmrich:

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

Please take further notice that pursuant to  
Section(s) **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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours

  
Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOSEPH HELMRICH	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	

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Petitioner, Joseph Helmrich, 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 1966 and 1967. (File No. 7-78646393). 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 May 25, 1973, at 10:30 A.M. Petitioner appeared by Barnet H. Goldberg. The Income Tax Bureau appeared by Saul Heckelman, Esq. (James Scott, Esq., of Counsel).

ISSUE

Did petitioner, Joseph Helmrich's selling activities during the years 1966 and 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Joseph Helmrich, and his wife filed New York State combined income tax returns for the years 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joseph Helmrich, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1966 and 1967. It also imposed a penalty of \$458.52 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,487.36.

3. Petitioner, Joseph Helmrich, conducted a textile sales business under the name of Helmrich Textile Company during the years 1966 and 1967. He represented Mardenise Corp. during the period from January 1, 1966 through October 6, 1966. He represented Hanover Mills, Inc. during the period from October 7, 1966 through December 31, 1967.

4. Helmrich Textile Company maintained an office at 52 Park Avenue in New York City during the years 1966 and 1967. Petitioner, Joseph Helmrich, paid all of the expenses of the office, with the exception of rent which was paid by the principals for whom he sold textiles. Commissions were paid by the principals to the company. Federal and New York State income taxes and social security tax were not withheld from these commission payments. He filed a Schedule "C" in which he deducted the business expenses from the gross commissions. He also deducted payments made to a self-employed retirement fund on his Federal income tax return for the year 1967. The firms

for whom he sold textiles did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales.

5. Petitioner, Joseph Helmrich, failed to submit any evidence that he had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1966 and 1967.

CONCLUSIONS OF LAW

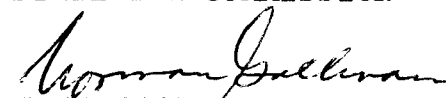
A. That the income received by petitioner, Joseph Helmrich, from the firms he represented during the years 1966 and 1967 constituted income from his regular business of selling textiles and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

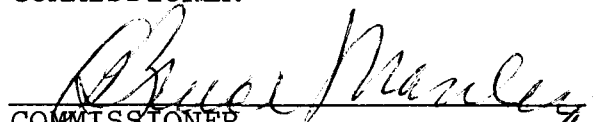
B. That the aforesaid activities of petitioner, Joseph Helmrich, during the years 1966 and 1967 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C That the petition of Joseph Helmrich is denied and the Notice of Deficiency issued November 24, 1969, is sustained.

DATED: Albany, New York  
July 23, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER