

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THE ESTATE OF BERNARD WAGENSTEIN

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

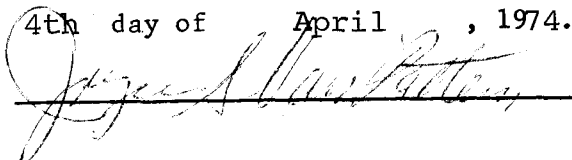
Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of April , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Estate of  
Bernard Wagenstein (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Estate of Bernard Wagenstein  
52 North Strathmore Street  
Valley Stream, New York 11581

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

4th day of April , 1974.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE ESTATE OF BERNARD WAGENSTEIN

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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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 :

State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of April , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Matthew D. Lippman,  
C.P.A.

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

wrapper addressed as follows: Matthew D. Lippman, C.P.A.

Maser, Krasnow & Lippman

18 East 48th Street

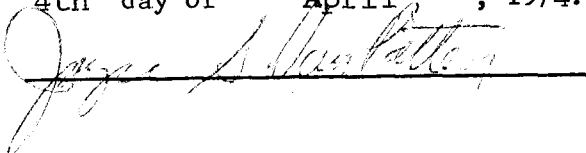
New York, New York 10017

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Sworn to before me this

4th day of April , 1974.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

Mario A. Procaccino  
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**April 4, 1974**

**Estate of Bernard Wagenstein  
52 North Strathmore Street  
Valley Stream, New York 11581**

**Gentlemen:**

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	:	
THE ESTATE OF BERNARD WAGENSTEIN	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966 and 1967.	:	

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The Estate of Bernard Wagenstein filed a petition under sections 722 and 689 of the Tax Law for a redetermination of a deficiency issued May 26, 1969, in the amount of \$1,019.26 plus interest of \$91.43 and a penalty for failure to file returns of \$254.82 for a total of \$1,365.51 in unincorporated business tax under Article 23 of the Tax Law for the years 1966 and 1967.

A hearing was duly held on May 2, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Matthew D. Lippman, C.P.A., of Maser, Krasnow and Lippman. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether petitioner, a sales representative, is an independent contractor and subject to unincorporated business tax.

#### FINDINGS OF FACT

1. Petitioner at one time was a retail furniture salesman

and later a furniture store manager. Around 1964 he began to sell for manufacturers and sought manufacturers which could be acceptable to him. When he found Benchmade in 1966, he concentrated on that account and did design and production work for them as well as selling. Petitioner died in 1968. Since then the company has gone bankrupt.

2. In 1966 and 1967, Mr. Wagenstein's sales were primarily for two furniture companies, Benchmade of Montreal, Canada, from which he earned about \$14,000.00 a year and Sieling of Pennsylvania from which he earned about \$13,000.00. He had smaller amounts of income from three other firms.

3. Mr. Wagenstein's territory was the New York metropolitan area. All of the companies he represented were outside of New York and he had to travel frequently to shows at their factories.

4. Mr. Wagenstein reported no withholding of taxes or social security on his own tax returns. He did pay self-employment tax and in 1967 took a self-employment retirement deduction computed with reference to his net profit shown on his Schedule "C".

5. Although petitioner filed a tax return for unincorporated business tax for 1965 he did not do so in 1966 and 1967 since he apparently thought that his association with Benchmade would exempt him from tax.

#### CONCLUSIONS OF LAW

Petitioner is subject to tax as he is clearly an independent contractor and not an employee. The penalty will however be cancelled.


The deficiency without the penalty is found to be correct  
and is due together with such interest as may be due under  
section 684 of the Tax Law.

DATED: Albany, New York  
April 4, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER