

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT BERKOFF

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

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 and 1967.

State of New York
County of Albany

JANET MACK, 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 25th day of October, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ROBERT BERKOFF

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Robert Berkoff
2000 Linwood Avenue
Fort Lee, New Jersey

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

25th day of October, 1974.

Franklin J. Scurro

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT BERKOFF

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 and 1967.:

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

State of New York
County of Albany

JANET MACK

, 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 25th day of October, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon HERBERT KRAMER, 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: Herbert Kramer, C.P.A.
Clarence Rainess & Co.
570 Seventh Avenue
New York, New York 10018

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

25th day of October, 1974.

Matthew Durasi

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
October 25, 1974

Mr. Robert Berkoff
2000 Linwood Avenue
Fort Lee, New Jersey

Dear Mr. Berkoff:

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,

L. Robert Leisner
L. Robert Leisner

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Robert Berkoff, has filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1966 and 1967. (File No. 74538184). A formal hearing was held before L. Robert Leisner, Hearing Officer, at the office of the State Tax Commission, 80 Centre Street, New York, New York, on December 10, 1973, at 3:00 P.M.

ISSUE

I. During the years 1966 and 1967 was petitioner, Robert Berkoff, entitled to an exemption from the unincorporated business tax as an employee?

II. If petitioner, Robert Berkoff, was not exempt from the unincorporated business tax for 1966 and 1967 was he entitled to an allocation of income for said years?

FINDINGS OF FACT

1. Petitioner, Robert Berkoff, and his wife filed New York State income tax resident returns for the years 1966 and 1967. They did not file unincorporated business tax returns for said years.

2. On August 29, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert Berkoff, and his wife imposing unincorporated business income upon the income received by him as a traveling salesman during the year 1966. Petitioner, Robert Berkoff, paid the tax and later claimed a refund of the same. On May 25, 1970, the Income Tax Bureau issued a notice formally disallowing his refund claim. On July 27, 1970, the Income Tax Bureau issued a Notice of Deficiency against petitioner imposing unincorporated business tax upon the income received by him as a traveling salesman during the year 1967. It also asserted a penalty against him for failure to file an unincorporated business tax return for said year.

3. Petitioner, Robert Berkoff, was a traveling salesman during the years 1966 and 1967. He represented several firms, who manufactured women's sportswear. During 1966 he sold merchandise for Bay Club, whose main office was in Los Angeles, and for Jo Matthews, Inc., Gordon Peters Co. and Pantsmaker, Inc., all of whom had their main office in New York City. During 1967 he represented the same firms, excluding Bay Club. His actual territory was the New England States: Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and Maine.

4. Petitioner, Robert Berkoff, had no written agreement with any of the companies whom he represented. Under his oral arrangement he was paid on a commission basis for whatever orders he sent in. He was instructed to call on certain accounts and was restricted to the above mentioned territory. He was not allowed to sell the same or similar lines of merchandise within or without his territory.

He did not maintain an inventory or employ any assistants. All his orders had to be approved by the companies, and he was required to attend sales meetings.

5. During the years 1966 and 1967, petitioner, Robert Berkoff, spent 45 to 47 weeks of each year traveling in his territory. He spent weekends, from Friday night until Monday morning at his home in Freeport, New York. During 1967, he maintained an office in Boston, Massachusetts at 38 Chauncey Street. He paid a monthly rent of \$70.00 per month. This and all other traveling expenses he deducted on Schedule "C" of his Federal Income Tax return. At this office, petitioner had desks, other furniture, racks to hang sample merchandise and a telephone. All his contracts and appointments and 95% of his telephone calls were done in the office. Petitioner had calling cards and stationery on which his name, his Boston office and the names of the companies whom he represented were printed. Petitioner maintained this office for part of the year 1966. However, he could not remember for what part of the year he had the office and offered no substantial evidence.

6. During 1966 and 1967, petitioner, Robert Berkoff, came into New York about a dozen times each year to view the new lines. He did practically no selling in New York.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Robert Berkoff, from the firms he represented during the years 1966 and 1967 constituted income from his regular business of selling women's sportswear and not income as an employee exempt from the imposition of the unincorporated business tax under section 703(b) of the Tax Law.


B. That petitioner, Robert Berkoff, maintained a regular place of business outside of New York State during 1967 and is entitled to an allocation of his income for said year. Since nearly all of his business activities were conducted outside of New York State for said year all of his business income for that year is allocable to outside New York State.

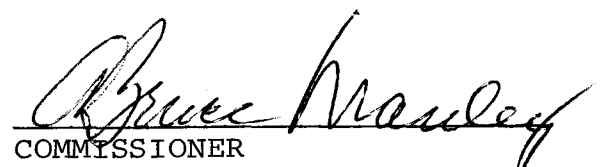
C. That petitioner, Robert Berkoff, failed to prove that he maintained an office outside of New York State during 1966 and, therefore, is not entitled to an allocation for said year.

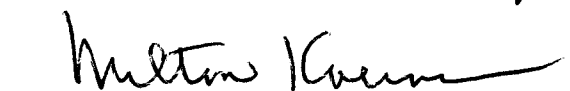
D. That the petition of Robert Berkoff is granted to the extent of determining that there is no deficiency against him in unincorporated business tax for the year 1967. The denial of the refund claim for the year 1966 is sustained.

DATED: Albany, New York
October 25, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER