

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JACK KOENIG

:  
:  
:  
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) 1965, 1966 & :  
1967

State of New York  
County of Albany

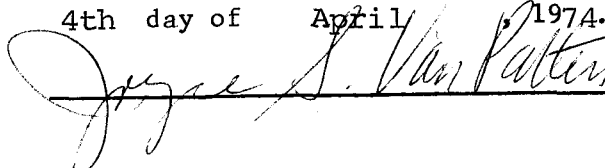
Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of April , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Jack Koenig  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Jack Koenig  
1810 Avenue N  
Brooklyn, New York

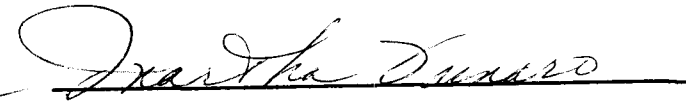
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

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

4th day of April , 1974.

  
James S. Van Patten

  
Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK KOENIG

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) 1965, 1966 & :  
1967

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 Jesse Schraub, 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: Jesse Schraub, C.P.A.

520 Fifth Avenue  
New York, New York 10036

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

*Joyce L. Van Katten*

*Martha Funaro*



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  
~~MEMORANDUM~~, 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**

**Mr. Jack Koenig**  
**1810 Avenue N**  
**Brooklyn, New York**

**Dear Mr. Koenig:**

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	:	
JACK KOENIG	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

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Jack Koenig filed a petition under sections 722 and 689 of the Tax Law for refund of amounts paid on December 18, 1968, for the year 1965, and for the redetermination of deficiencies asserted by a notice of deficiency dated October 27, 1969, for the years 1966 and 1967, each for unincorporated business taxes imposed under Article 23 of the Tax Law.

A hearing was held on October 12, 1971, 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 Jesse Schraub, C.P.A. The Income Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

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

FINDINGS OF FACT

1. Petitioner is a salesman of ladies' coats. During the years in question, Mr. Koenig represented three principals: Jackie Stuart Juniors, Inc. of New York City, which was the source of five-sixths of his income; Weather Bound Inc. of New York City; and 770 Originals Inc. of New York City, for whom he made one casual sale only.

2. Mr. Koenig began with Jackie Stuart Juniors, Inc. in 1962. He had a small guaranteed draw against commissions. During the years in issue there was no withholding of either income taxes or social security. Since September, 1968, Jackie Stuart Juniors, Inc. has been withholding. Since March, 1971, Jackie Stuart Juniors, Inc. has continued paying Mr. Koenig a salary despite the fact that he had major surgery and has not been working.

3. Mr. Koenig has been with Weather Bound Inc. since January, 1965. He received a small guaranteed draw against commissions. Federal income and social security taxes were withheld from his compensation.

4. Both Jackie Stuart Juniors, Inc. and Weather Bound Inc. state, in letters, that Mr. Koenig is subject to their direction and control. Mr. Koenig must see customers in their respective showrooms. Each principal is aware of the other.

5. The refund in issue for 1965 is \$279.19 plus interest of \$42.91 to November 15, 1968, for a total of \$322.10. The deficiencies for 1966 and 1967 together amount to \$1,076.23 plus penalty under section 685(a) of the Tax Law of \$269.06 and interest of \$113.46 for a total of \$1,458.75.

#### CONCLUSIONS OF LAW

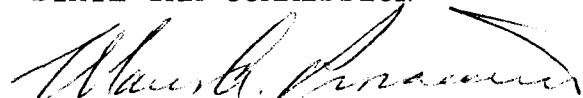
The petitioner has not shown by a preponderance of the evidence that he is an employee. He is, therefore, subject to tax.

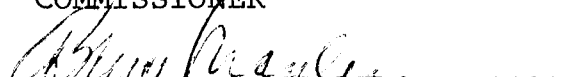
#### DECISION

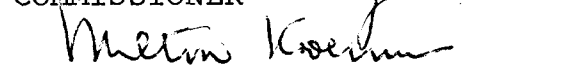
The petition is denied. The refund is denied. The deficiencies are correct and are due together with additional interest as computed under section 684 of the Tax Law.

DATED: Albany, New York  
April 3, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER