In the Matter of the Petition

of

MAX PICARD and AUDREY PICARD

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) 1960, 1961 &: 1962

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 25th day of June , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Max & Audrey Picard

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Max Picard
9 Harcourt Road
Scarsdale, 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

25th day of

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MAX PICARD and AUDREY PICARD

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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 25th day of June , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Thomas H. Cullinan,
Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Thomas H. Cullinan, Esq.
686 Port Washington Boulevard
Port Washington, 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.

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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 HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

A. BRUCE MANLEY
MILTON KOERNER

Dated: Albany, New York

June 25, 1974

Mr. & Mrs. Max Picard 9 Harcourt Road Scarsdale. New York

Dear Mr. & Mrs. Picard:

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

of

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 relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly/yours,

HEARING OFFICER

cc Petitioner's Representative Law Bureau STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MAX PICARD and AUDREY PICARD

DECISION

for Redetermination of Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1960, 1961 and 1962.

Petitioners, Max Picard and Audrey Picard, filed a petition for redetermination of a deficiency or for a refund of unincorporated business tax under Article 23 of the Tax Law for the tax years 1960, 1961 and 1962. (File No. 3-8500107.) A formal hearing was held before Evelyn King, Esq., Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on Monday, April 7, 1969, at 10:30 A.M. Petitioners, Max Picard and Audrey Picard, appeared by Thomas H. Cullinan, Esq.

ISSUES

- 1. Did the activities of petitioner, Max Picard, as a salesman during the years 1960, 1961 and 1962 constitute the carrying on of an unincorporated business?
- 2. If petitioner, Max Picard, was carrying on an unincorporated business during the years 1960, 1961 and 1962, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. Petitioners, Max Picard and Audrey Picard, filed New York

State income tax resident returns for the years 1960, 1961 and 1962. They did not file New York State unincorporated business tax returns for said years.

- 2. On May 10, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Max Picard and Audrey Picard, imposing unincorporated business tax upon the income received by them from petitioner, Max Picard's activities as a salesman during the years 1960, 1961 and 1962, and, accordingly, issued a Notice of Deficiency.
- 3. Petitioner, Max Picard, was a commission salesman of women's fashions during the years 1960, 1961 and 1962. He sold goods for six different firms. Petitioner used two of his principals' offices in New York City, rent free, where he employed two persons whose principal duties were selling in showrooms, expediting shipments to customers and handling orders by mail. Petitioner regularly and systematically carried on his business activities at these offices.
- 4. Petitioner, Max Picard, also maintained an office in Houston, Texas, in connection with his work for Casual Corner Co., Inc. which had offices both in Houston and Dallas, Texas.
- 5. Petitioner, Max Picard, received \$4,200 from Casual Corner Co., Inc. in 1960 and \$4,900 from Casual Corner Co., Inc. in 1961.
- 6. Petitioner, Max Picard's wife, Audrey Picard, was not involved in the carrying on of an unincorporated business during the years 1960, 1961 and 1962.

CONCLUSIONS OF LAW

- A. That the income received by petitioner, Max Picard, as a salesman during the years 1960, 1961 and 1962 constituted income from his regular business as a women's fashions salesman 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 income received by petitioner, Max Picard, from his activities as a salesman during the years 1960, 1961 and 1962 is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.
- C. That the office maintained by petitioner, Max Picard, in Houston, Texas, constituted a regular place of business outside of New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.
- D. That since petitioner, Max Picard, carried on his business within and without New York State and since he maintained a regular place of business outside of New York State, therefore, a fair and equitable allocation of his unincorporated business net income must be made in accordance with the meaning and intent of section 707(a) of the Tax Law.
- E. That in computing petitioners, Max and Audrey Picards' unincorporated business tax liability for the years 1960, 1961 and 1962, the \$4,200 received by petitioner, Max Picard, in 1960 from Casual Corner Co., Inc. and \$4,900 received by him in 1961

from Casual Corner Co., Inc. should be excluded from New York business income.

- F. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued against petitioner,

 Max Picard, and that except as so modified the Notice of Deficiency is sustained and the petition of Max Picard is denied.
- G. That the Income Tax Bureau is hereby directed to cancel the Notice of Deficiency issued against petitioner, Audrey Picard.

DATED: Albany, New York

June 25, 1974

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK

Department of Taxation and Finance STATE CAMPUS

ALBANY, N. Y. 12227

& Mrs. Max Picard

253986

Scarsdale, New York

9 Hardourt Road



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

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STATE TAX COMMISSION HEARING UNIF

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June 25, 1974

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Very trady yours,

Paul B. Coburn HEARING OFFICER

cc Petitioner's Representative Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition

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MAX PICARD and AUDREY PICARD

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DATED: Albany, New York
June 25, 1974

STATE TAX COMMISSION

COMMISSIONER

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DATED: Albany New York

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