

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL W. and MAXINE R. SCHUR

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) 1963, 1964 and :
1965.

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 11th day of April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon MICHAEL W. and
MAXINE R. SCHUR (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

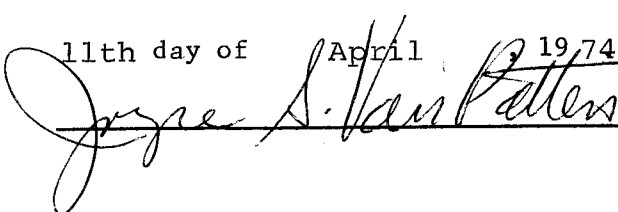
Mr. & Mrs. Michael W. Schur
12 Glenn Place
Hastings-On-Hudson, New York 10706

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

11th day of April, 1974


Joyce S. Van Patten


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL W. & MAXINE R. SCHUR

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State of New York
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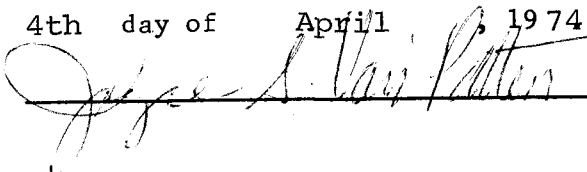
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of April , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Michael W. &
Maxine R. Schur (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Michael W. Schur
600 West 246th Street
New York, New York 10471

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

MICHAEL W. & MAXINE R. SCHUR

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) 1963, 1964 & :
1965

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 , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Moe D. Karash

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

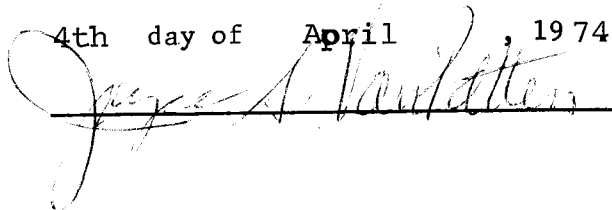
wrapper addressed as follows: Moe D. Karash, Esq.
32 Court Street
Brooklyn, New York 11201

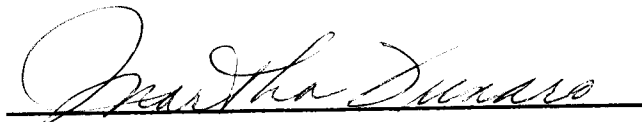
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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
~~XXXXXXXXXX~~, 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. & Mrs. Michael W. Schur
600 West 246th Street
New York, New York 10471

Dear Mr. & Mrs. Schur:

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

In the Matter of the Petition	:	
of	:	
MICHAEL W. and MAXINE R. SCHUR	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1963, 1964 and 1965.	:	

Michael W. and Maxine R. Schur filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency issued November 27, 1967, in the amount of \$558.59 plus interest of \$80.24 and penalty for failure to file returns of \$139.65 for a total of \$778.48 for unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964 and 1965.

A hearing was duly held on February 8, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer.

The petitioner was represented by Moe D. Karasch, Esq. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the petitioner, Mr. Schur, who is a manufacturer's representative, is an independent contractor and subject to unincorporated business tax.

FINDINGS OF FACT

1. Mr. Schur was a manufacturer's representative. From 1963 through 1971 he represented Natric Knitwear Corporation of 1407 Broadway, New York City, a manufacturer of cotton knits, pants, shorts and tops.

2. Natric paid Mr. Schur a commission with a draw of \$200.00 a week.

3. Mr. Schur had a territory in the Midwest: Michigan, Ohio, Indiana and the cities of Pittsburgh and Louisville. He made four sales trips a year, of one month each. When he was not traveling he reported to the Natric showroom in New York City and worked there.

4. Mr. Schur had worked for a manufacturer named Peter Freund, which went out of business in 1963. Mr. Schur and four other salesmen from that business then formed their own company, Edinboro Knitters, Ltd., to make sweaters. It rented space from Natric at the Broadway address. However, this business failed in 1965. Mr. Schur sold for Edinboro in the same territory he sold for Natric and to the same customers.

5. In 1965 both Natric and Edinboro withheld Federal tax and social security but no state tax. In 1963 and 1964 there was no withholding and Mr. Schur paid his own Federal self-employment tax.

6. Mr. Schur pays his own expenses without reimbursement. This included a 25% share of advertisements placed by his customers on a shared-cost basis with Natric and himself.

7. Mr. Schur does not maintain his own office or employ assistants.

8. Mr. Schur is not filing returns acted under advice of a tax advisor.

CONCLUSIONS OF LAW

A. Petitioner is an independent contractor and is subject to tax. While petitioner cites "question 25" of the regulations (20 NYCRR 281.2 question 25) and its statutory authority, section 386 of Article 16-A of the Tax Law as amended in 1953, this exempts salesmen from tax only where the only evidence of an independent contractor status is the sale of products for more than one person where no office is maintained and no assistants are employed. (See Tax Law section 703(f) under Article 23 of the Tax Law and Frishman v. S.T.C. 33 AD 2d 1071.) In this case other evidence of an independent contractor status is present, such as the absence of withholding of taxes and social security and the nonreimbursement of expenses.

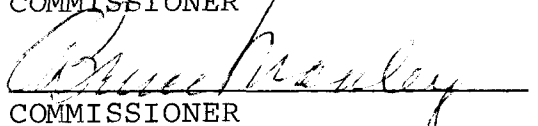
B. The penalty is waived.

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

DATED: Albany, New York
April 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

X

Apr-51

Mr. & Mrs. Michael W. Schur
600 West 246th Street
New York, New York 10471

No. 253894

SS # - 131-13-8494



STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS

ALBANY, N.Y. 12227

J.R. Rock

- ☐ Moved, left no address
☐ No such number
☐ Moved, not forwardable
☐ Addressee unknown

Moe D. Karash, Esq.

32 Court Street

Brooklyn, New York 11201

4971

253895





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
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~~JOHN J. KELLY, JR.~~ PRESIDENT

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EDWARD ROOK
SECRETARY TO
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