

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HENRY & ROSE SIMKIN

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

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 Henry & Rose Simkin

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

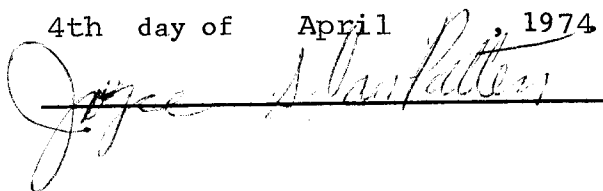
wrapper addressed as follows: Mr. & Mrs. Henry Simkin  
74-10 35th Avenue  
Jackson Heights, New York 11372

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





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STATE TAX COMMISSION

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Notice of Decision (or Determination) by (certified) mail upon Louis B. Belsky, C.P.A.

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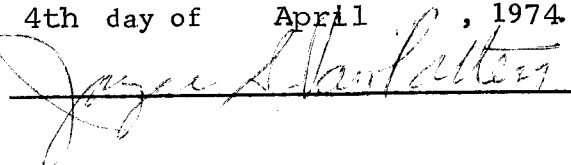
wrapper addressed as follows: Louis B. Belsky, C.P.A.  
275 Madison Avenue  
New York, New York 10016

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STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
Mario A. Procaccino  
~~JOSEPH XXXXX~~, PRESIDENT

A. BRUCE MANLEY  
MILTON KOERNER

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

**Dated:** Albany, New York

**April 4, 1974**

**Mr. & Mrs. Henry Simkin**  
**74-10 35th Avenue**  
**Jackson Heights, New York 11372**

**Dear Mr. & Mrs. Simkin:**

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	:	
HENRY and ROSE SIMKIN	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Year 1965.	:	

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Henry and Rose Simkin filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency issued July 28, 1969, in the amount of \$341.48 plus interest of \$67.32 for a total of \$408.80 in unincorporated business taxes under Article 23 of the Tax Law for the year 1965.

A hearing was duly held on February 6, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Louis B. Belsky, C.P.A. of Belsky, Abbe and Freidman.

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

#### ISSUE

The issue in this case is whether petitioner is an independent contractor and subject to tax.

#### FINDINGS OF FACT

1. Mr. Simkin is a manufacturer's representative. In 1965

he sold furniture for Milano Furniture Company of Chicago, Illinois, and lamps for Lamp Fashion Manufacturing Company of New York City.

2. Mr. Simkin's territory is primarily in New York City. He paid his own expenses and was not reimbursed.

3. No income which Mr. Simkin receives is subject to withholding of either taxes or social security. He is not covered for unemployment insurance or medical or pension benefits.

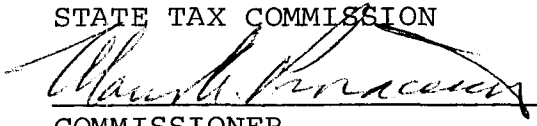
CONCLUSIONS OF LAW

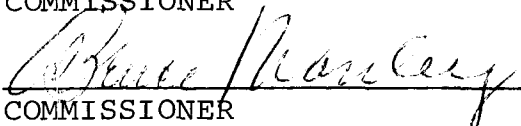
Petitioner is subject to tax since he is an independent contractor. The regulation cited by petitioner (20 New York CRU Sec. 281.3 Question 28) clearly by its own terms exempts only those who are employees. While the absence of withholding for Federal and state taxes and the absence of normal employee benefits may not necessarily mean petitioner is an independent contractor, the Commission can certainly be skeptical of petitioner's claim of employee status for purposes of this tax where he apparently is claiming the opposite status for other purposes. In any event the petitioner has the burden of proof and he has not met it.

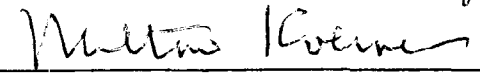
The deficiency is found correct in its entirety and is due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York  
April 4, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER