

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT ZIMMERMAN

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) 1967, 1968 & :  
1969.

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 4th day of November , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Herbert Zimmerman

~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Herbert Zimmerman  
69-14 215th Street  
Bayside, New York 11364

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)~~  
~~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 November , 1974.

*James S. Van Patten*

*Janet Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

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HERBERT ZIMMERMAN

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For a Redetermination of a Deficiency or  
a Refund of **Unincorporated Business** :  
Taxes under Article(~~3~~) 23 of the  
Tax Law for the Year(s) 1967, 1968 & :  
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State of New York  
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age, and that on the 4th day of November , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Joseph Lapatin, Esq.

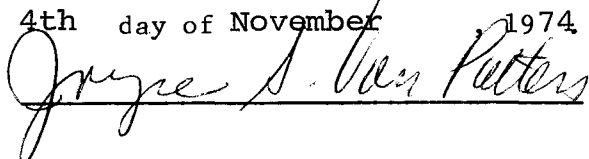
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wrapper addressed as follows: Joseph Lapatin, Esq.  
475 Fifth Avenue  
New York, New York 10017

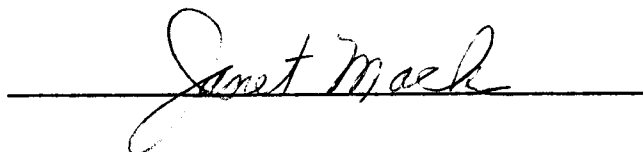
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known address of the (representative of the) petitioner.

Sworn to before me this

4th day of November, 1974







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  
**November 4, 1974**

**Mr. Herbert Zimmerman**  
**69-14 215th Street**  
**Bayside, New York 11364**

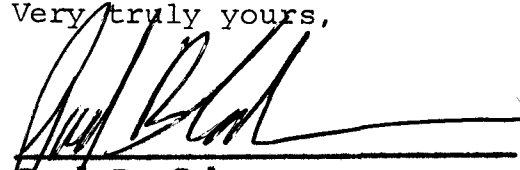
**Dear Mr. Zimmerman:**

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

Please take further notice that pursuant to  
Section (~~8~~) **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,

  
**Paul B. Coburn**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HERBERT ZIMMERMAN	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967, 1968 and 1969.	:	

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Petitioner, Herbert Zimmerman, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967, 1968 and 1969. (File No. 9-34367583.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on August 15, 1974, at 12:55 P.M. Petitioner appeared by Joseph Lapatin, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Alexander J. Weiss, Esq., of counsel).

ISSUES

I. Did the selling activities of petitioner, Herbert Zimmerman, during the years 1967, 1968 and 1969 constitute the carrying on of an unincorporated business?

II. If petitioner, Herbert Zimmerman, was carrying on an unincorporated business during the years 1967, 1968 and 1969, what portion of the income derived therefrom should be allocated to New York State?

III. Did petitioner, Herbert Zimmerman, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967, 1968 and 1969?

FINDINGS OF FACT

1. Petitioner, Herbert Zimmerman, and his wife filed New York State income tax resident returns for the years 1967, 1968 and 1969. He did not file New York State unincorporated business tax returns for said years.

2. On January 31, 1972 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Herbert Zimmerman, imposing unincorporated business tax in the total sum of \$1,944.34 upon the income received by him from his activities as a salesman during the years 1967, 1968 and 1969. It also imposed penalties in the total sum of \$573.78 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,794.86.

3. Petitioner, Herbert Zimmerman, was a maternity wear salesman during the years 1967, 1968 and 1969. He represented six unaffiliated firms during the years 1967 and 1968 and three unaffiliated firms during the year 1969. He did not have any employees. He did not have his own business letterhead.

4. During the years 1967, 1968 and 1969 the firms for whom petitioner, Herbert Zimmerman, sold maternity wear did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. They did not cover him

for workmen's compensation or unemployment insurance. He was not reimbursed for his business expenses. He deducted his business expenses on a Schedule "C" of his Federal income tax returns. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

5. During the years 1967, 1968 and 1969 petitioner, Herbert Zimmerman, maintained an office in his home in Bayside, New York. He did not have an office or a regular place of business outside of New York State. All of his sales were made to customers located outside of New York State. His territory consisted of the states of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama.

6. Petitioner, Herbert Zimmerman, did not file New York State unincorporated business tax returns for the years 1967, 1968 and 1969 because he believed that he was not liable for the unincorporated business tax.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Herbert Zimmerman, from the firms that he represented during the years 1967, 1968 and 1969 constituted income from his regular business of selling maternity clothes and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of sections 703(b) and 703(f) of the Tax Law.

B. That the aforesaid activities of petitioner, Herbert Zimmerman, during the years 1967, 1968 and 1969 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That since petitioner, Herbert Zimmerman, did not have a regular place of business outside of New York State during the years 1967, 1968 and 1969, all of his business income, including the income derived from out-of-state sales during the period, was properly allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

D. That petitioner, Herbert Zimmerman, did not have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967, 1968 and 1969 and, therefore, the penalties assessed pursuant to section 685(a) of the Tax Law for the years 1967 and 1968 and pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1969 were proper.

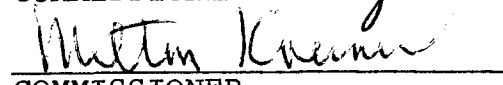
E. That the petition of Herbert Zimmerman is denied and the Notice of Deficiency issued January 31, 1972 is sustained.

DATED: Albany, New York  
November 4, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER