

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH BOUER

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 and
1967.

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 9th day of October, 1975, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon JOSEPH BOUER

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

wrapper addressed as follows: Mr. Joseph Bouer
62 Stratford Road
West Hempstead, New York 11552

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~~
~~or~~) 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

9th day of October, 1975

Mary Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Coburn
Mr. Leisner
(518) 457-3336

DATED: Albany, New York
October 9, 1975

Mr. Joseph Bouer
62 Stratford Road
West Hempstead, New York 11552

Dear Mr. Bouer:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: ~~Department of Taxation and Finance~~
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH BOUER	:	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.	:	
	:	

Petitioner, Joseph Bouer, of 62 Stratford Road, West Hempstead, New York, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 7-74552244).

Petitioner timely filed U.S. Individual Income Tax Returns (Form 1040), together with attached explanation sheets for 1965, 1966 and 1967. He did not file New York State Unincorporated Business Tax returns for the above years.

A Statement of Audit Changes together with a notice of deficiencies in unincorporated business taxes for the years 1965, 1966 and 1967 in the amount of \$729.43 plus a 25% penalty charge of \$182.36 was issued on July 27, 1970.

Petitioner filed a petition for redetermination of deficiency on October 17, 1970. Formal hearings were held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 8, 1975, and Building No. 9, State Campus, Albany, New York, on April 18, 1975, before Nigel G. Wright, Hearing Officer. The taxpayer represented himself, and the Department of Taxation and Finance was represented by Saul Heckelman, Esq., appearing by James Scott, Esq.

ISSUE

The issue is whether petitioner, Joseph Bouer's activities as a traveling sales representative for several home and office furnishing companies constituted the carrying on of an unincorporated business under Section 703, Article 23 of the Tax Law for the years 1965, 1966 and 1967.

FINDINGS OF FACT

1. Petitioner, Joseph Bouer, worked during all three years in question as a sales representative for and received commissions from the following companies: Fine Arts Ltd., New York, New York, from which he received one-third to one-half of his income annually; Standbuilt Upholstery Co., Brooklyn, New York, accounting for one-fifth to one-third of his annual income; and Mutual-Sunset Lamp Mfg. Co., Trenton, New Jersey, accounting for one-fifth to one-fourth of his annual income.

The remaining four companies, for which petitioner worked in the same sales representative capacity during the years 1965, 1966 and 1967, usually each produced less than \$1,000.00 of his income per year. These companies were: Mutual-Sundial Lamp Mfg. Co., High Point, North Carolina, for which petitioner worked during the years 1965 and 1966; Cleveland Chair Co., Cleveland, Tennessee, for 1965; Dearborn Co., Chicago, Illinois, for 1965; and Design 400 Ltd., New York, New York, for 1966 and 1967.

2. The amounts of gross business income for the years in question are: 1965, \$21,599.75; 1966, \$22,288.49; and 1967, \$30,423.51.

3. During the years 1965, 1966 and 1967 petitioner received at irregular intervals from the said companies various forms of correspondence. The topics of such correspondence generally concerned general company sales policy, changes in particular lines of merchandise, adjustments of sales prices, suggested sales goals, announcements of promotional meetings or training seminars, as well as various problems with individual accounts. With the exception of the correspondence concerning matters specific to the individual sales representative, most of these circulars were from letters typically addressed to all salesmen. Often the tenor of these letters was authoritarian. However, usually there were provisions which would allow the sales

representative to adjust details according to his particular priorities and needs. While such correspondence was frequent, it almost always dealt with general company desires and goals rather than specific details, which were usually left to the individual sales representative.

4. Petitioner was supplied by each of his principals with uniform order forms, business cards, and stationery bearing their own company letterhead, and often designating petitioner as their sales representative.

5. Petitioner has produced letters from Fine Art Lamps Ltd. and Mutual-Sunset Lamp Mfg. Co. which state that petitioner is a salesman and is restricted in his authority and activity as a company employee. However, petitioner has admitted that while these letters were authorized by the said companies, the specific language was dictated by himself.

6. During the years in question petitioner maintained in his basement a space set aside for a desk, chair, and business files. His wife sometimes performed certain clerical tasks for him, and occasionally another girl would be hired to deliver catalogs. Petitioner was not reimbursed by any of the said companies during this period for any expenses he incurred in his activities as a sales representative.

7. During the years 1965, 1966 and 1967, none of the said companies withheld from petitioner's commission any income or social security taxes. Neither was he provided with any coverage under workmen's compensation, unemployment insurance, nor any pension plan. Further, he received no type of formal employee benefits other than an occasional holiday gratuity.

CONCLUSIONS OF LAW

A. The income received by petitioner, Joseph Bouer, from the companies he represented during the years 1965, 1966 and 1967 constituted income from his regular business of selling various lines of home and office furnishings, not compensation as an employee exempt from unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

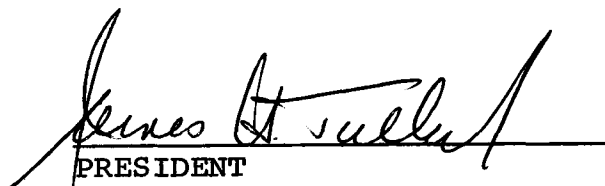
B. While control is the traditional test in showing an employer-employee relationship, such control must go beyond directing activity to achieve general goals. An employer has the legal right to supervise the details of the manner and method of the performance of the duties of the employee. There are several factors other than simple work supervision which must be considered when determining to what extent the legal right to control exists. These factors include reimbursement of expenses, withholding of income and social security taxes, providing workmen's compensation and unemployment insurance, and other employee benefits.

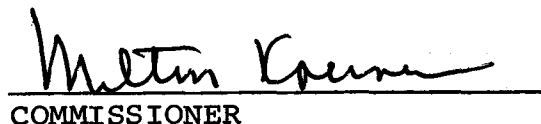
C. The aforesaid activities of petitioner, Joseph Bouer, during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. The Notice of Deficiency issued June 1, 1970 is sustained.

DATED: Albany, New York
October 9, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER