

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MEYER L. KANNER

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 (8) 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 29th day of December, 1975, she served the within

Notice of Decision (~~ex Determination~~) by (certified) mail upon Meyer L. Kanner

(~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Meyer L. Kanner
3400 Greenfield Avenue # 1
West Los Angeles, California 90034

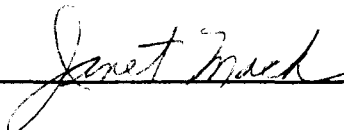
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

29th day of December, 1975.







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. Leisner
Mr. Coburn
(518) 457-3850

DATED: Albany, New York
December 29, 1975

Mr. Meyer L. Kanner
3400 Greenfield Avenue # 1
West Los Angeles, California 90034

Dear Mr. Meyer:

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

Please take further notice that pursuant to
Section(s) **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: ~~XXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MEYER L. KANNER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Petitioner, Meyer L. Kanner, residing at 3400 Greenfield Avenue #1, West Los Angeles, California 90034, 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 1965, 1966 and 1967. (File No. 7-8730320).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 23, 1975, at 2:25 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

ISSUE

Did petitioner, Meyer L. Kanner's selling activities during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Meyer L. Kanner, and his wife filed New York State income tax resident returns for the years 1965 and 1966 and a New York State combined income tax return for the year 1967. He did not file New York State unincorporated business tax returns for said years.

2. On December 28, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Meyer L. Kanner, imposing unincorporated business tax in the total sum of \$2,496.13 upon the income received by him from his activities as a salesman during the years 1965, 1966 and 1967. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,483.57.

3. During the period from January 1, 1965 until September 1, 1967, petitioner, Meyer L. Kanner, was a carpet salesman for the Monarch Carpet Mills and Windsor Carpet Mills, divisions of E.T. Barwick Mills, Inc. He did not sell the products of any other corporation during said period. His sole loyalty in the performance

of his services was to the corporation. His selling activities were subject to substantial control and supervision by the corporation. He used a portion of his home as an office.

4. During the period from January 1, 1965 to May 31, 1965, petitioner, Meyer L. Kanner, was a straight commission salesman for E.T. Barwick Mills, Inc. Federal and New York State income taxes and social security tax were not withheld from commissions. He was not reimbursed for any of his expenses.

5. During the period from June 1, 1965 until September 1, 1967, petitioner, Meyer L. Kanner, received a salary of \$2,000.00 a month plus expenses, pursuant to a written employment contract with Monarch Carpet Mills Company. The contract provided for a specific territory. It further provided that he would devote his full time to the company's business and that he would not represent any other lines or be employed by any other companies. He was covered for unemployment, workmen's compensation, disability, medical and life insurance. He was a member of its pension plan. His employment was terminated by the company on September 1, 1967.

6. On September 20, 1967, petitioner, Meyer L. Kanner, formed a New York corporation known as Kanner Carpets, Inc. He was the sole employee and stockholder of the corporation from the period of its inception to December 31, 1967.

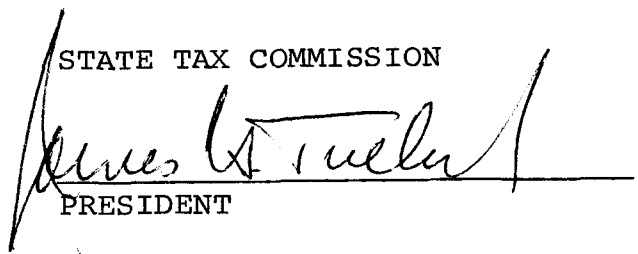
CONCLUSIONS OF LAW

A. That the income received by petitioner, Meyer L. Kanner, from his activities as a carpet salesman for E.T. Barwick Mills, Inc. during the period from January 1, 1965 to September 1, 1967, and for Kanner Carpets, Inc. for the period from September 20, 1967 to December 31, 1967, constituted 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 petition of Meyer L. Kanner is granted and the Notice of Deficiency issued December 28, 1973, is cancelled.

DATED: Albany, New York
December 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER