

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD MISHAAN

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 & :
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 30th day of January , 1975, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Richard Mishaan

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Richard Mishaan
1912 E. 7th Street
Brooklyn, New York

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

30th day of January , 1975.

Latherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD MISHAAN

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 (3) 23 of the
Tax Law for the Year(s) 1965, 1966 & :
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 30th day of January , 1975 , she served the within
Notice of Decision (~~on Redetermination~~) by (certified) mail upon Edwin Shor, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edwin Shor, C.P.A.

26 Court Street
Brooklyn, New York 11242

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

30th day of January , 1975

Katherine D. Manley

Janet Mack



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

Mr. Richard Mishaan
1912 E. 7th Street
Brooklyn, New York

Dear Mr. Mishaan:

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

In the Matter of the Petition	:	
of	:	
RICHARD MISHAAN	:	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, Richard Mishaan, 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. 74314970). 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 November 22, 1974, at 9:25 A.M. Petitioner appeared by Edwin Shor, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, Richard Mishaan's selling activities during the years 1965, 1966 and 1967, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Richard Mishaan, and his wife filed New York State income tax resident returns for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On September 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Richard Mishaan, imposing unincorporated business tax in the total sum of \$1,623.93 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 \$1,848.15.

3. During the years 1965, 1966 and 1967, petitioner Richard Mishaan, was a ladies' accessories salesman. He sold ladies' handkerchiefs and scarves for Berkshire Handkerchief Company, Inc. and ladies' gloves, scarves and blouses for Regent International Corporation.

4. Petitioner, Richard Mishaan, owned one-third of the stock of Regent International Corporation. One-third of the stock was owned by Jack Shweky and one-third of the stock was owned by Berkshire Handkerchief Company, Inc. He did not derive any income from Regent International Corporation during the years 1965, 1966 and 1967.

5. During the years 1965, 1966 and 1967, Berkshire Handkerchief Company, Inc. paid petitioner, Richard Mishaan, commissions based on a percentage of the total sales made by him and Jack Shweky during said years. He, in turn, paid over to Jack Shweky amounts equal to the commissions due on sales actually made by Jack Shweky.

Berkshire Handkerchief Company, Inc. did not withhold Federal or New York State income taxes or social security tax from said commissions. It did not cover him for workmen's compensation insurance. It did not reimburse him for expenses incurred in connection with his sales activities. He deducted said expenses on Schedule "C" of his Federal income tax returns. Berkshire Handkerchief Company did not exercise any substantial control or supervision over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

CONCLUSIONS OF LAW

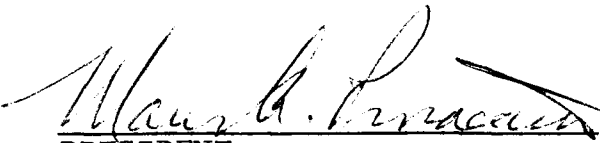
A. That the income received by petitioner, Richard Mishaan, from Berkshire Handkerchief Company, Inc. during the years 1965, 1966 and 1967, constituted income from his regular business of selling ladies' handkerchiefs and scarves and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

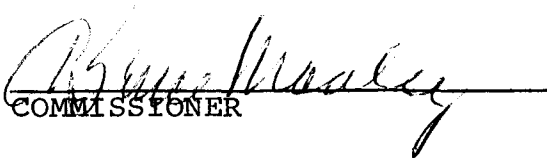
B. That the aforesaid activities of petitioner, Richard Mishaan, during the years 1965, 1966 and 1967, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

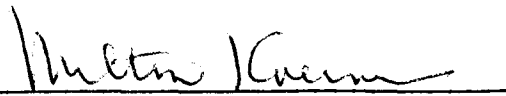
C. That the petition of Richard Mishaan is denied and the Notice of Deficiency issued September 29, 1969, is sustained.

DATED: Albany, New York
January 30, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER