

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH TIRMAN

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) 1960 through 1964.

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 21st day of May , 1975 , she served the within  
Notice of Decision ~~(or Determination)~~ by (certified) mail upon Joseph Tirman

~~representative of the~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Joseph Tirman  
177 Sussex Road  
Elmont, New York 11003

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 the)~~  
~~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

21st day of May 1975.

*James J. Van Patten*

*Janet Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax Law for the Year(s) 1960 through 1964

State of New York  
County of Albany

JANET MACK

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Notice of Decision ~~(or Determination)~~ by (certified) mail upon Abba Koblenz, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Abba Koblenz, Esq.

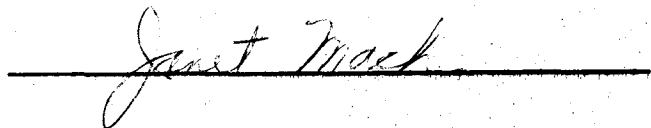
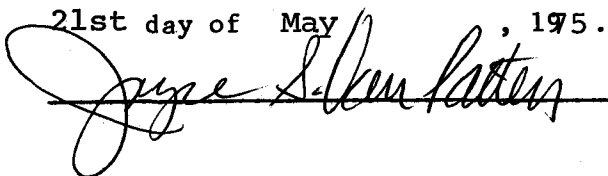
90 State Street  
Albany, New York 12207

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known address of the (representative of the) petitioner.

Sworn to before me this

21st day of May , 1975.





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

**James H. Tully, Jr.**  
~~President~~ 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  
**May 21, 1975**

**Mr. Joseph Tirman**  
**177 Sussex Road**  
**Elmont, New York 11003**

**Dear Mr. Tirman:**

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

Please take further notice that pursuant to  
Section **(a) 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: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

## STATE TAX COMMISSION

In lieu of a hearing, petitioner submitted his case to the Commission on the file of the Income Tax Bureau. Petitioner was represented by Abba Koblenz, Esq. Said file has been duly examined and considered.

### ISSUES

The issues in this case are; (A) whether petitioner, a sales representative for several manufacturers, is engaged in an unincorporated business, (B) whether certain expenses claimed by petitioner were incurred and whether they are ordinary and reasonable and (C) a penalty for failure to file returns.

### FINDINGS OF FACT

1. Petitioner is a sales representative for several handbag manufacturers selling to chain stores and department stores and has been so for the past twenty-five years. These manufacturers include:

Dubette Bags, Inc. of 33rd Street, New York City  
Babette Sales of 33rd Street, New York City  
Empress Hand Bag Co. of Fifth Avenue, New York City  
I. Smallman  
Tally-Ho Creations Ltd.  
Charles Block

2. Petitioner is compensated on a straight-commission basis. Petitioner was not reimbursed for any expenses.

3. Petitioner used part of his home for storing samples, maintaining records and phoning customers. He otherwise does not maintain an office but works out of the offices of his principals.

4. Petitioner had a territory covering New York and other eastern seaboard states down to and including Washington, D.C.

Petitioner traveled about twenty weeks a year.

5. When not traveling, petitioner would attend showrooms in New York City.

6. One of petitioner's principals, Empress Hand Bag Co., states that petitioner is required to call on delinquent accounts, to travel at minimum intervals and to render reports. No copies of reports have been offered in evidence.

7. Some advertising expenses incurred for customers were charged to petitioner. Petitioner would sometimes be charged with a bad debt of a customer but the circumstances thereof are not known.

8. As restrictions on his activities by principals, the petitioner lists only the size of his territory, the general type of customers and the capacity of the principals to fill orders.

9. Petitioner was not regarded by any of his principals as an employee for payroll tax, social security, or any other purpose.

10. Petitioner has not shown that any of his principals control the methods and means by which he performs his work.

11. Petitioner has claimed business expenses in each year from \$25,000 to \$30,000 or about half of his gross commissions. These include car expenses of about \$5,000, out-of-town selling expenses of about \$13,000 including entertainment of \$3,000, hotels of \$4,000, tips of \$1,000 and local selling expenses of

about \$10,000 including entertainment of exactly \$3,500 each year and gifts to customers of about \$3,900.

12. Petitioner was subject to audit by Federal authorities for the years 1960, 1961 and 1962. This audit found that the petitioner failed to substantiate the business expenses and disallowed them to the same extent as is here in issue for those years. The expenses disallowed for 1963 and 1964 of \$20,000 in each year are estimated.

13. Petitioner did not file returns for unincorporated business tax for the years in question. Petitioner litigated his liability for unincorporated business tax for the year 1957 and the Commission found him liable for such tax.

#### CONCLUSIONS OF LAW

A. The petitioner is subject to tax. He is an independent contractor who is not subject to the legal right of any principal to control the methods and means by which he performs his work.

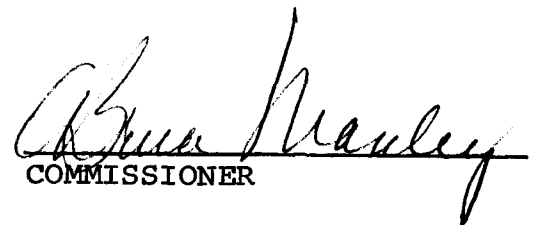
B. The petitioner has not carried the burden of proof as to the business expenses here in issue.

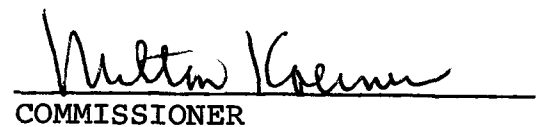
C. The penalties for failure to file a return are entirely justified.

Dated: Albany, New York  
May 21, 1975

STATE TAX COMMISSION

\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER