

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MAXWELL J. WORTMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969 and 1970.	:	

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Maxwell J. Wortman, 5 Nancy Lane, Spring Valley, New York 10977, filed a petition under sections 689 and 722 of the Tax Law for a redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970. (File No. 0-64519222.) The deficiency in issue amounts to \$2,057.96 plus interest of \$501.56 and a penalty of \$768.07 for a total of \$3,327.59.

A hearing was duly held on November 20, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Sidney Weiss, C.P.A. and Max J. Rosenshein of Rosenshein, Neiman and Weiss. The Income Tax Bureau was represented by Peter J. Crotty, Jr., Esq., appearing by Alexander Weiss, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner is an independent contractor subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner was a manufacturer's representative. He represented Madison Sportswear Co., Inc. of Boston, Massachusetts, and a related firm, Wardrobe Maker, Inc., also of Boston. Both had an office at 1410 Broadway, New York, New York. Both manufactured ladies sportswear.
2. Petitioner had a territory which included Long Island, New York City, Northern New Jersey and Westchester, Rockland, Sullivan and Ulster Counties. He traveled at least three days each week.
3. Petitioner was compensated on a straight commission basis. No amounts were withheld from his compensation for taxes or social security.
4. Petitioner incurred expenses amounting to over one-third of his commissions which he deducted for tax purposes on page one of his Federal return. These expenses included about \$2,000.00 for the maintenance of an office at his home and substantial

amounts for sales promotion and entertainment and gifts. He was not reimbursed for these expenses.

5. In the years in question petitioner received a very small amount of commissions from P.M. Knitwear of 1457 Broadway, New York City and from Columbia Minerva Corp. of 295 Fifth Avenue, New York City.

6. There is a conflict in evidence as to whether petitioner could accept lines from other manufacturers without the permission of the manufacturers he currently represented. No finding on that matter can be made.

7. Petitioner did not appear or testify at the hearing.

8. No reason has been advanced for the waiver of penalties.

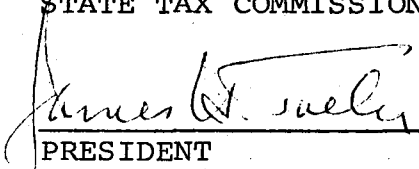
#### CONCLUSIONS OF LAW

A. That the petitioner has failed to carry the burden of proof that he is subject to the legal control of an employer as to the details of the performance of his work. He is therefore an independent contractor and is subject to unincorporated business tax.

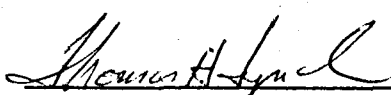
B. That the deficiency is correct and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
August 5, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER