

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH BOUER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Taxes :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) 1968, :
1969, 1970, 1971, 1972 and 1973.

State of New York
County of Albany

BRUCE BATCHELOR, 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 December, 1976, she served the within

Notice of Decision 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~
~~--of the)~~ 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 December, 1976.

Bruce Batchelor

Janet Truck

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH BOUER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Taxes :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) 1968 :
1969, 1970, 1972 and 1973.

State of New York
County of Albany

BRUCE BATCHELOR, 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 December, 1976, she served the within
Notice of Decision by (certified) mail upon Charles Becker
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Charles Becker
150 Broadway
New York, New York 10038

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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 December, 1976

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 21, 1976

TELEPHONE: (518) 457-3850

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(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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

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 1968, :
1969, 1970, 1971, 1972 and 1973.

Petitioner, Joseph Bouer, 62 Stratford Road, West Hempstead, New York 11552, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for 1968, 1969, 1970, 1971, 1972 and 1973 (File Nos. 0-64152676 and 3-34170385). A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on June 9, 1976. Petitioner appeared by Charles Becker. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Whether the petitioner's income from his activities as a salesman is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner did not file unincorporated business tax returns for 1968, 1969, 1970, 1971, 1972 and 1973. Upon audit, the Income Tax Bureau issued two Notices of Deficiency holding the income from his activities as a salesman subject to the unincorporated business tax.

2. Petitioner is a salesman representing several firms strictly on a commission basis, with no withholding of payroll taxes and no reimbursement of business expenses. He was not covered by an employee pension plan or by other employee related programs.

3. Petitioner asserted that his territory was restricted and that all his principals exercised a degree of control over his activities. He periodically reported to various concerns and solicited orders only on the letterheads of his principals and at prices fixed by them.

4. No division of time and effort between the various firms he represented was shown or exercised by the petitioner.

CONCLUSIONS OF LAW

A. That the petitioner, Joseph Bouer, has not sustained the burden of proof that his principals exercised sufficient direction and control to result in an employee-employer relationship.

B. That the petitioner is subject to the unincorporated business tax within the meaning and intent of section 703 of Article 23 of the Tax Law.

C. That the petition of Joseph Bouer is denied and that the Notices of Deficiency issued July 9, 1974 for the years 1968, 1969, 1970, 1971, 1972 and 1973, are sustained.

DATED: Albany, New York
December 21, 1976

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER