

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MEYER P. COHEN

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of December , 1976 , ~~He~~ served the within
Notice of Decision by (certified) mail upon Meyer P. Cohen
~~(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 P. Cohen
147-34 70th Road
Flushing, New York 11367

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)~~
~~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

14th day of December , 1976.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MEYER P. COHEN

AFFIDAVIT OF MAILING

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

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 14th day of December, 1976, she served the within
Notice of Decision by (certified) mail upon Max Markrow
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Max Markrow
666 Fifth Avenue
New York, New York 10019
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

14th day of December, 1976.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

December 14, 1976

TELEPHONE: (518) **457-3850**

Mr. Meyer P. Cohen
147-34 70th Road
Flushing, New York 11367

Dear Mr. Cohen:

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

Please take further notice that pursuant to
Section(**§**) **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 | : | |
| MEYER P. COHEN | : | 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. | : | |

Petitioner, Meyer P. Cohen, residing at 147-34 70th Road, Flushing, New York 11367, has filed a petition 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. (File No. 0-68007239).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on June 11, 1976, at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Max Markrow. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq. of counsel).

ISSUE

Whether the income received by petitioner, Meyer P. Cohen, from his activities as a manufacturer's representative, is subject to the unincorporated business tax pursuant to Article 23 of the New York Tax Law.

FINDINGS OF FACT

1. Petitioner, Meyer P. Cohen, did not file unincorporated business tax returns for the years 1968, 1969 and 1970.
2. Upon audit, the Income Tax Bureau issued a Notice of Deficiency holding the income from his activities as a manufacturer's representative subject to the unincorporated business tax.

3. Petitioner, Meyer P. Cohen, is a manufacturer's representative, representing three or more firms during 1968, 1969 and 1970. He was strictly on a commission basis with no withholding of payroll and no reimbursement of business expenses.

4. Petitioner, Meyer P. Cohen, considered himself an independent contractor in his business relationships with the various firms he represented.

5. Petitioner, Meyer P. Cohen, had no division of time and effort between the firms he represented. Although he periodically reported to them, no restrictions or controls were imposed over his time and activities.

6. Petitioner, Meyer P. Cohen, paid his own self-employment taxes and was not covered by employee related programs.

CONCLUSIONS OF LAW

A. That the principals represented by petitioner, Meyer P. Cohen, failed to exercise sufficient direction and control over his activities during the years 1968, 1969 and 1970 to constitute services as an employee within the meaning and intent of section 703(b) of the Tax Law.

B. That the activities of the petitioner constituted the carrying of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income from such activities for the years 1968, 1969 and 1970 was subject to the unincorporated business tax.

C. That the petition of Meyer P. Cohen is denied and the Notice of Deficiency issued November 26, 1973 is sustained.

DATED: Albany, New York
December 14, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER