

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR RATNER

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) ~~xxxxxxx~~ 1969; :  
and 1970.

State of New York  
County of Albany

Donna Scranton, 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 10th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Seymour Ratner ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Seymour Ratner  
1231 Sussex Road  
Teaneck, New Jersey  
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)~~ ~~xxxxxxx~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ ~~xxxxxxx~~ petitioner.

Sworn to before me this

10th day of November, 1976

Donna Scranton

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR RATNER

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)~~ 1969 :  
and 1970.

State of New York  
County of Albany

Donna Scranton, 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 10th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Albert J. Cohen, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Albert J. Cohen, Esq.  
598 Madison Avenue  
New York, 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 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

10th day of November, 1976

Donna Scranton

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

November 10, 1976

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

Mr. Seymour Ratner  
1231 Sussex Road  
Teaneck, New Jersey

Dear Mr. Ratner:

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

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In the Matter of the Petition	:	
of	:	
SEYMOUR RATNER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1969	:	
and 1970.	:	

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Petitioner, Seymour Ratner, residing at 1231 Sussex Road, Teaneck, New Jersey, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969 and 1970. (File No. 0-58501960).

A small claims hearing was held August 20, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. The petitioner appeared by Albert J. Cohen, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

Whether or not petitioner's income from sales activities is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Seymour Ratner, filed personal income tax returns for 1969 and 1970. He did not file unincorporated business tax returns. On the returns filed, petitioner, Seymour Ratner, identified his occupation as "sales representative" and reported business income for both years. The Income Tax Bureau held that the business income resulted from self-employment subject to

unincorporated business tax and issued a Notice of Deficiency dated April 12, 1974. The unincorporated business tax due for 1969 and 1970 was \$1,337.71, interest \$297.31, for a total due in the amount of \$1,635.02.

2. Petitioner, Seymour Ratner, was a traveling salesman for one employer. He was paid on a commission basis. No deductions were made from his wages. He was not issued a wage withholding tax statement by his employer. His employer was in the artificial flower and novelty business and this was the customary arrangement in the trade for compensating salesmen. Petitioner, Seymour Ratner, filed Federal Schedule C and financed his own retirement plan. Petitioner, Seymour Ratner, did not employ assistants.

3. Although petitioner, Seymour Ratner, was only paid on a commission basis for his sales in a certain territory, he was required to perform other duties. When not traveling, he was required to work regular hours in the office of his employer servicing other accounts besides his own. He also helped in purchasing, preparing sample lines and also managing the office when the manager was out of the country. He prepared sales shows in different parts of the country and represented his employer at these shows. Petitioner, Seymour Ratner, was reimbursed by his employer for traveling and living expenses incurred in connection with the shows.

4. Petitioner, Seymour Ratner, was considered an employee by his employer. Petitioner, Seymour Ratner, was allowed a yearly two week vacation at a certain time of year. His sales territory was changed whenever the employer deemed it advantageous to do so. Petitioner, Seymour Ratner, was not permitted to work for any other principal. In regards to all duties including selling, he was directed as to what he should do and how it should be done.

CONCLUSIONS OF LAW

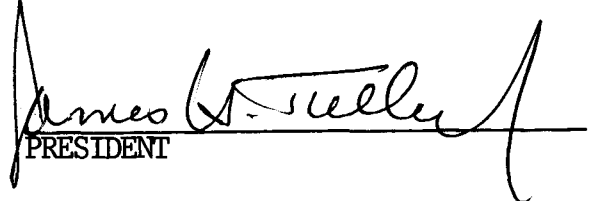
A. That petitioner, Seymour Ratner, was an individual performing services for his employer under an employer-employee relationship. The employer exercised control and direction over petitioner's actions, not only as to results to be obtained but also as to how the work was to be done. The services were performed as an employee within the meaning and intent of section 703(b) of the Tax Law.

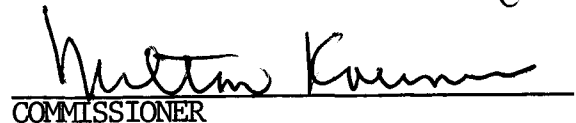
B. That petitioner, Seymour Ratner, was not engaged in the carrying on of a business within the meaning and intent of section 703(a) of the Tax Law.

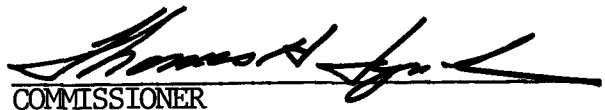
C. That the petition of Seymour Ratner is sustained and the Notice of Deficiency issued April 12, 1974 is cancelled.

DATED: Albany, New York  
November 10, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER