

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MAXWELL J. WORTMAN

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Catherine Steele, 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 5th day of August, 1976, she served the within
Notice of Decision by (certified) mail upon Maxwell J. Wortman

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Maxwell J. Wortman
5 Nancy Lane
Spring Valley, New York 10977

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~~
~~XXXXXX~~ 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

5th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAXWELL J. WORTMAN

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) ~~XXXXXX~~ (s) :
1968, 1969 and 1970.

State of New York
County of Albany

Catherine Steele, 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 5th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Max J. Rosenshein of Rosenshein, Neiman and Weiss (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Messrs. Sidney Weiss & Max J. Rosenshein
Rosenshein, Neiman and Weiss
61 Broadway
New York, New York 10006
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

5th day of August, 1976

Catherine Steele

Janet Mach



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

August 5, 1976

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

Mr. Maxwell J. Wortman
5 Nancy Lane
Spring Valley, New York 10977

Dear Mr. Wortman:

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

Please take further notice that pursuant to
Section ~~87~~ **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,

[Signature]
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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.	:	

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.

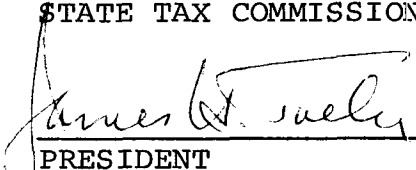
CONCLUSIONS OF LAW

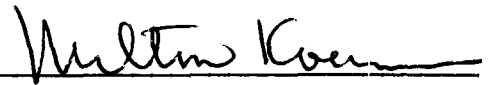
A. That the petitioner has failed to carry the burden of proof that he is subject to the legal control of an employer as to the details of the performance of his work. He is therefore an independent contractor and is subject to unincorporated business tax.

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