

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH ADELMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (2) 23 of the :
Tax Law for the Year ~~(1970)~~ 1971 :

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 18th day of January , 19 77, she served the within
Notice of Decision by (certified) mail upon Louis A. Mintz, C.P.A.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Louis A. Mintz, C.P.A.
300 Madison Ave.
New York City, N.Y. 10017

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

18th day of January , 19 77

Bruce Batchelor

Janet Mark

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH ADELMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(ss)~~ 23 of the :
Tax Law for the Year ~~(s) or Period(s)~~ 1971 :

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 18th day of January , 1977 , he served the within
Notice of Decision by (certified) mail upon Joseph Adelman
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph Adelman
217-17 82nd Ave.
Queens Village, N.Y. 11427
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

18th day of January , 1977

Bruce Batchelor

Janet Bush



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

TELEPHONE: (518) **457-1723**

January 18, 1977

Joseph Adelman
217-17 82nd Ave.
Queens Village, N.Y. 11427

Dear Mr. Adelman:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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
Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:
Louis A. Mintz, C.P.A.
300 Madison Ave.
New York City, N.Y. 10017
Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH ADELMAN

DECISION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Taxes :
under Article 23 of the Tax Law for the
Year 1971. :

Petitioner, Joseph Adelman, residing at 217-17 82nd Avenue, Queens Village, New York, 11427, 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 year 1971 (File No. 1-78705371).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 13, 1976 at 9:15 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Louis A. Mintz, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Whether the income received by the petitioner, Joseph Adelman, from his activities as a magazine subscription salesman is subject to the unincorporated business tax, or is he an employee exempt from the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Joseph Adelman, timely filed a New York State income tax return for the year 1971. He did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Joseph Adelman, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1971. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency dated September 29, 1975, in the sum of \$520.85.

3. The petitioner, Joseph Adelman, was a commission magazine subscription salesman representing the "International Fashion Report" which specializes in a fashion service for designers.

4. From the period January 1, 1971 through September 30, 1971, the petitioner, Joseph Adelman, represented only one firm, International Fashion Report on a commission basis, with a guaranteed draw of \$500.00 per week against commissions. From the period October 1, 1971 through December 31, 1971, the petitioner represented numerous publishers on an independent basis.

5. During the year 1971, the petitioner, Joseph Adelman, paid his own self-employment taxes and was not covered by workmen's compensation or other employee-related programs.

6. The petitioner, Joseph Adelman, filed a Federal Form 1040, Schedule C for the year 1971. He maintained an office in his home and did not have any assistants. He was not reimbursed for any expenses; however, petitioner asserts that the amount of \$500.00 received as a guaranteed draw from International Fashion Report also was to cover all the expenses he may incur.

7. The petitioner did not submit any employment contract or agreement between himself and International Fashion Report. He was required to submit reports periodically of sales, visitation, orders, and leads.

8. Petitioner, Joseph Adelman, developed his own leads, set up his own work schedules and had sole control over his activities and techniques in making sales.

CONCLUSIONS OF LAW

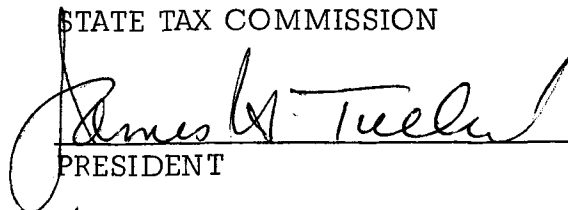
A. That the petitioner, Joseph Adelman, has not sustained the burden of proof that his principal, International Fashion Report, exercised sufficient direction and control to result in an employee-employer relationship.

B. That the income received by the petitioner from his activities as a magazine subscription salesman, 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 Adelman is denied and that the Notice of Deficiency issued September 29, 1975 for the year 1971 is sustained.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER