

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY AND JUDITH BERGENFELD

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

Marsina Donnini, 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 22 day of July, 1977, she served the within

Notice of Decision by (certified) mail upon Stanley and
Judith Bergenfeld

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. & Mrs. Stanley Bergenfeld
209-39 23rd Avenue
Bayside, New York 11360

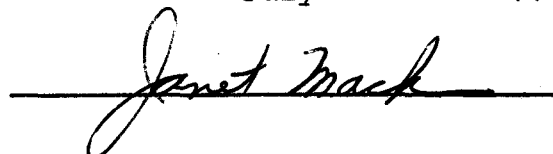
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

22 day of July, 1977





STATE OF NEW YORK
STATE TAX COMMISSION

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of

STANLEY AND JUDITH BERGENFELD

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For a Redetermination of a Deficiency or :
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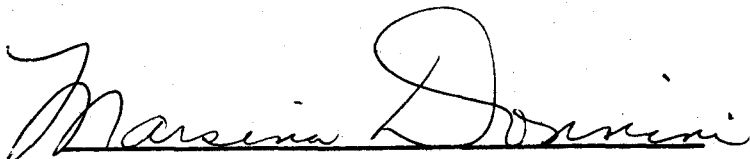
State of New York
County of Albany

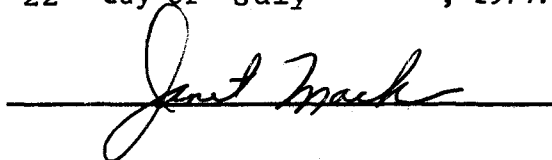
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Richard Sandusky, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Richard Sandusky, CPA
c/o Irving Greenbaum & Co.
276 Fifth Avenue
New York, New York 10001
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

22 day of July, 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

July 22, 1977

Mr. & Mrs. Stanley Bergenfeld
209-39 23rd Avenue
Bayside, New York 11360

Dear Mr. & Mrs. Bergenfeld:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STANLEY AND JUDITH BERGENFELD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1968,	:	
1969 and 1970.	:	

Petitioners, Stanley and Judith Bergenfeld, residing at 209-39 23rd Avenue, Bayside, New York 11360, 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 1968, 1969 and 1970 (File No. 0-13075).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer on February 9, 1977 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Richard Sandusky, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Was the income derived from petitioner's activities as a sales representative during the years 1968, 1969 and 1970 subject to the unincorporated business tax?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During the years 1968, 1969 and 1970, petitioner, Stanley Bergenfeld, was a sales representative for several firms, although the majority of his income was derived from the sale of merchandise for Dap, Inc.
2. The principals for whom petitioner sold did not exercise supervision or control over his sales activities.
3. Petitioner, Stanley Bergenfeld, participated in the Keogh Plan as a sole proprietor during 1969.
4. Petitioner, Stanley Bergenfeld, entered into an agreement with a former sales representative of Dap, Inc. wherein for consideration of ten thousand dollars (\$10,000.00) said representative agreed not to compete with petitioner.
5. Petitioner incorporated his sales activities in 1970. He continued to operate substantially in same manner as before such incorporation.
6. With the exception of the first six months in 1968, none of the principals for whom petitioner sold withheld Federal or New York State income taxes or social security tax from his compensation.
7. That the income received by petitioner, Stanley Bergenfeld from his sales activities during the years 1968, 1969 and 1970, including the wages received in 1968 from which deductions were made for withholding and social security taxes, constituted income received as an independent contractor from his regular business of selling and not compensation as an employee.

8. That petitioner, Stanley Bergenfeld's activities as a sales representative during the years 1968, 1969 and 1970, prior to his incorporation, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

9. That the petition of Stanley Bergenfeld is denied and the Notice of Deficiency in the sum of \$1,858.76 issued December 28, 1973 is sustained together with such additional interest as may be legally owing.

DATED: Albany, New York

July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER