

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

MARKUS BERKAL

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)~~ :
1969, 1970, and 1971

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 15th day of July, 1977, she served the within Notice of Decision by (certified) mail upon Markus Berkal (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Markus Berkal
2728 Henry Hudson Parkway
New York, NY
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

15th day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MARKUS BERKAL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(*) 23 of the :
Tax Law for the Year(s) or Period(s) :
1969, 1970, and 1971

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 15th day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Allan M. Bachman

(representative of) the petitioner in the within proceeding,

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

as follows: Allan M. Bachman
Speyer, Baylor and Bachman, CPA
22 East 40th Street
New York, NY 10016

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

15th day of July, 1977.

Marsina Donnini

Jared Mack



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

July 15, 1977

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

**Mr. Markus Borkal
2728 Henry Hudson Parkway
New York, NY**

Dear Mr. Borkal:

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 **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 Chynoweth
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARKUS BERKAL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

Petitioner, Markus Berkal, residing at 2728 Henry Hudson Parkway, New York, New York, has 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, 1970 and 1971 (File No. 12525).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on October 19, 1976 at 10:45 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Allan M. Bachman. The Income Tax Bureau appeared by Peter Crotty, Esq. (I. A. Levy, Esq. of counsel).

ISSUE

Whether the salary income received by the petitioner, Markus Berkal, is so integrated with his unincorporated business activities that it constitutes additional unincorporated business income.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Markus Berkal, was employed by Button House, Inc. as a salaried salesman during the years 1969, 1970 and 1971. In addition, he received commission income from other firms which he represented as an independent salesman, selling non-competing lines of merchandise.

2. Petitioner sold the non-competing lines of merchandise with the approval of Button House, Inc. These lines were sold during the course of the day, along with the other products sold for his employer.

3. The salary income received by the petitioner was \$6,875.00 for 1969, \$6,750.00 for 1970 and \$6,750 for 1971. Commission income received from various principals was \$8,125.00 for 1969, \$8,330.00 for 1970 and \$7,109.00 for 1971.

4. That since the petitioner was rendering services as an employee, and also actively engaged in his own independent

business, without a clear division of time, the salary income is deemed to constitute part of the unincorporated business regularly carried on by the petitioner in accordance with the meaning and intent of section 703 of the Tax Law.

5. That the petition of Markus Berkal is denied and the Notice of Deficiency issued in the amount of \$1,374.76 for the years 1969, 1970 and 1971 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER