

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK M. and FRANCES S. BERMAN

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~~
1971 and 1972

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
Xhe is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27 day of April, 1977, Xhe served the within
Notice of Decision by (certified) mail upon Jack M. & Frances S.
Berman ~~(XXXXXXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Jack M. Berman
215 East 68 Street
New York, New York 10021
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 ~~(XXXXXXXXXX)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXXXXXX)~~ petitioner.

Sworn to before me this

27 day of April, 1977

Bruce Batchelor

Janet Buck



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

April 27, 1977

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

Mr. & Mrs. Jack M. Berman
215 East 68 Street
New York, New York 10021

Dear Mr. & Mrs. Berman:

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
Supervisor of
Small Claims Hearings

Enc.

cc: ~~Petitioner's Representative~~
~~State Tax Commission~~

Taxing Bureau's Representative:

STATE TAX COMMISSION

Petitioners, Jack M. and Frances S. Berman, residing at 215 East 68 Street, New York, New York 10021, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1971 and 1972. (File No. 2-14434242). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1976 at 1:15 P.M. Petitioner, Jack M. Berman, appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq., of counsel).

Did petitioner, Jack M. Berman's activities in the field of advertising and public relations during the years 1971 and 1972 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Jack M. and Frances S. Berman, filed New York State personal income tax returns on Form IT-201 for the years 1971 and 1972. Unincorporated business tax returns were not filed for said years. The Income Tax Bureau held that the activities of petitioner, Jack M. Berman, constituted the carrying on of an unincorporated business during the years 1971 and 1972. A Notice of Deficiency was issued July 29, 1974 to petitioner, Jack M. Berman, for said years in the amount of \$835.64 unincorporated business tax due, plus \$282.35 penalty, plus \$99.36 interest, for a sum of \$1,217.35.

2. Petitioner, Jack M. Berman, had two employers during 1971 and 1972. He received commission income in the amount of \$675.19 in 1971 and \$1,424.53 in 1972 from Newmark, Posner and Mitchell Inc. He received salary income in the amount of \$24,350.00 in 1971 and \$25,200.00 in 1972 from Marlene Industries Corp.

3. Prior to 1971, petitioner, Jack M. Berman, had worked as a full-time account executive for Newmark, Posner and Mitchell Inc. When he left their employ, petitioner, Jack M. Berman, continued to service two of their accounts on a part-time basis. In 1971 and 1972 he received from Newmark, Posner and Mitchell, a percentage of the business income generated from these two accounts. Petitioner, Jack M. Berman, performed these services evenings from office space located in his home. He was unsupervised. He reported business connected expenses on Federal schedule C and was issued Form 1099 reporting his commission income.

4. During the years 1971 and 1972, petitioner, Jack M. Berman, was employed as sales promotion director by Marlene Industries Inc. His activities were in the field of advertising and public relations. Petitioner, Jack M. Berman, worked from 7:00 A.M. to 6:00 P.M. daily for said corporation. He was paid a regular weekly salary and was issued a wage and tax statement. Social security, Federal, New York State and New York City personal income taxes were withheld from his wages. He was covered by a medical plan by his employer and was under the direct supervision of the president of the corporation. Petitioner, Jack M. Berman, did not claim, nor did he incur, any business expenses in connection with his employment.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Jack M. Berman, from Marlene Industries Inc. during the years 1971 and 1972 constituted compensation as an employee exempt from imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the income received by petitioner, Jack M. Berman, from Newmark, Posner and Mitchell Inc. during the years 1971 and 1972 constituted income resulting from the carrying on of an unincorporated business and, although subject to unincorporated business tax, was too small to produce a tax.

C. That the services rendered by petitioner, Jack M. Berman, as an employee of Marlene Industries Inc. were not so intergrated and interrelated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him and; therefore, the salary received by him as an employee of said corporation was exempt from imposition of the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That the petition of Jack M. and Frances S. Berman is granted and the Notice of Deficiency issued July 29, 1974 is cancelled.

DATED: Albany, New York
April 27, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER