

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HYMAN DORFMAN

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) ~~1963 and 1964~~ :
1963 and 1964

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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Hyman Dorfman ~~representative of~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Hyman Dorfman
11 Cameo Ridge Road
Monsey, New York 10952
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~~ ~~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

16 day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HYMAN DORFMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(22)~~ 23 of the :
Tax Law for the Year(s) ~~1963 and 1964~~ :
1963 and 1964

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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Bertrand Leopold (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Bertrand Leopold
18 Joseph Street
New Hyde Park, New York 11040
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

16 day of August, 1977.

Marsina Donnini

Janet Back



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

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

August 16, 1977

**Mr. Hyman Dorfman
11 Cameo Ridge Road
Monsey, New York 10952**

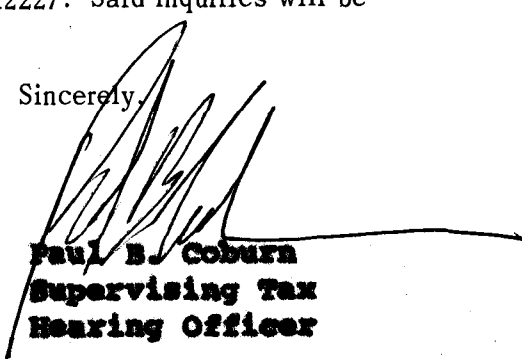
Dear Mr. Dorfman:

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,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HYMAN DORFMAN :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1963 and 1964. :

DECISION

Petitioner, Hyman Dorfman, 11 Cameo Ridge Road, Monsey, New York 10952, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963 and 1964. (File No. 01150).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 10, 1976 at 10:30 A.M. The petitioner appeared by Bertrand Leopold. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

Whether the activities of petitioner, Hyman Dorfman, as a fashion apparel salesman, constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law for the years 1963 and 1964.

FINDINGS OF FACT

1. Petitioner, Hyman Dorfman, filed New York State income tax resident returns for 1963 and 1964. In 1963, he listed \$18,428.32 as gross receipts on business income as a "manufacturer's representative." In 1964, he listed \$13,224.46 as business income as a sales representative.

2. On December 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Hyman Dorfman, imposing unincorporated business tax for the years 1963 and 1964, consisting of deficiencies of \$124.54, plus \$42.63 in interest, and \$213.58, plus \$60.29 in interest, respectively, upon the grounds that a State Tax Commission decision, dated March 5, 1969, for the year 1962 found that petitioner's activities constituted the carrying on of an unincorporated business. Accordingly, a Notice of Deficiency was issued totalling \$441.04.

3. Petitioner, Hyman Dorfman, was associated with Alice Kaye Sportswear (Venice Knitting Mills, Inc.), Candy Jones of California and Monique of Hialeah as a sales representative for their various lines of clothing during the years in issue. The lines for each principal were non-competitive. Petitioner contends that his relationship with Alice Kaye Sportswear (Venice Knitting Mills, Inc.) was that of an employee, and that his income from said corporation was exempt from unincorporated business tax.

4. The claimed employer did not withhold Federal or State taxes for petitioner, nor did it withhold social security or unemployment insurance. Petitioner was not a member of any company pension fund. Petitioner maintained an office in his home which was not reimbursed by the claimed employer, and he deducted these expenses as business expenses on schedule "C" of his Federal return for the years in issue. The company did not exercise any substantial direction and control over his sales activities and techniques or over the time that he devoted to sales.

CONCLUSIONS OF LAW

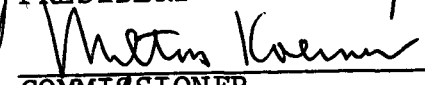
A. That, since Alice Kaye Sportswear (Venice Knitting Mills, Inc.) did not retain sufficient direction and control over petitioner, Hyman Dorfman, and did not require his sole loyalty in his sales activities, therefore, no employer/employee relationship was established and the petitioner's activities were not exempt from unincorporated business tax within the meaning and intent of section 703(b) of the Tax Law for the years 1963 and 1964.

B. That the petition of Hyman Dorfman is denied and the Notice of Deficiency issued December 29, 1969 is sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER