

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
BERNARD FINE

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) ~~1972 - 1973~~ :  
1972 - 1973

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 26 day of April , 1977, xhe served the within  
Notice of Decision by (certified) mail upon Bernard Fine  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Bernard Fine  
5 Cranford Road  
Plainview, New York  
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~~  
~~XXXX~~) 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

26 day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

BERNARD FINE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
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Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~1972-1973~~ :  
1972-1973

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 26 day of April , 1977, she served the within  
Notice of Decision by (certified) mail upon Samuel J. Bernstein,  
Accountant (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Samuel J. Bernstein, Accountant  
as follows: c/o Samuel J. Bernstein & Co.  
50 Court Street  
Brooklyn, New York 11201  
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

26 day of April , 1977.

Bruce Batchelor

Janet Mack



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 26, 1977**

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

**Mr. Bernard Fine  
5 Cranford Road  
Plainview, New York**

**Dear Sir:**

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

Please take further notice that pursuant to  
Section(m) **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:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
BERNARD FINE	:	DECISION
	:	
for Redetermination of Deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23	:	
of the Tax Law for the Years 1972 and	:	
1973.	:	
	:	

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Petitioner, Bernard Fine, 5 Cranford Road, Plainview, New York, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1972 and 1973. (File No. 3-45098770). A small claims hearing was held before Joseph Chyrywaty, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 26, 1976, at 10:45 A.M. Petitioner appeared by his accountant, Samuel J. Bernstein. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

Was the income derived from the petitioner's activities during the years 1972 and 1973 subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Bernard Fine, and his wife, Celia, filed New York State income tax resident returns for 1972 and 1973. Petitioner filed a New York State unincorporated business tax return for 1972 but did not file an unincorporated business tax return for 1973.

2. On August 25, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Bernard Fine, imposing an unincorporated business tax in the sum of \$1,622.84, on his total income for the years 1972 and 1973.

3. The Income Tax Bureau included wages paid to petitioner's wife, Celia Fine, as a substitute school teacher in petitioner's total business income for the year 1972.

4. During 1972, and until October 1, 1973, with the exception of a short period of time during which he worked inside for Maiden Form Inc., petitioner, Bernard Fine, was an outside sales representative engaged in the sale of women's sportswear. On October 1, 1973, he discontinued his business activities and became employed by Marco Polo Imports Ltd. in the capacity of National Sales Manager on a full time basis. From October 1, 1973 until April 1975, the petitioner worked solely for Marco Polo Imports Ltd. During this period, he was responsible for the supervision of sales personnel and received his compensation in the form of a salary. He was provided with an office and a secretarial staff. His duties were confined to the office to which he reported daily and worked during the normal business hours.

From the wages paid to him during 1973, Marco Polo Imports Ltd. withheld state and Federal income taxes as well as social security taxes.

5. Petitioner, Bernard Fine, contends that he received \$1,235.03 from Maiden Form Inc. during 1972 and \$7,560.00 from Marco Polo Imports Ltd. during 1973 as an employee of those respective firms and that such amounts are not includible in unincorporated business gross income. He also contends that the wages of \$293.53 paid to his wife are not subject to the unincorporated business tax.

#### CONCLUSIONS OF LAW

A. That the income received by the petitioner, Bernard Fine, from Marco Polo Imports Ltd. in the sum of \$7,560.00 during the year 1973 constitutes compensation as an employee exempt from the imposition of unincorporated business tax in accordance with section 703(b) of the Tax Law.

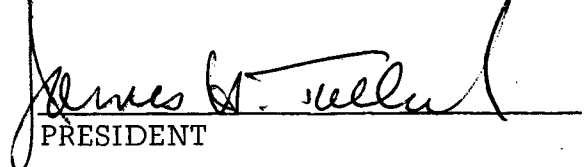
B. That the activities of petitioner, Bernard Fine, during the year 1972 and until October 1, 1973, at which time the petitioner discontinued business and became an employee, constituted an unincorporated business and that the income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the wages of \$293.53 paid to petitioner, Bernard Fine's wife, Celia Fine, during the year 1972, are not subject to the unincorporated business tax.

D. That the petition of Bernard Fine is granted to the extent that, total business income for the year 1972 be reduced from \$27,147.00 to \$26,853.47 and for the year 1973 total business income be reduced from \$37,113.00 to \$29,553.00, and that the exemption for the year 1973 be modified to reflect the short tax year of January 1, 1973 to October 1, 1973. That the recomputed unincorporated business tax deficiency shall be together with such interest as may be lawfully owing; and that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 25, 1975 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER