

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
WILLIAM FRIEDMAN

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)~~ 1963 :  
through 1973.

State of New York  
County of Albany

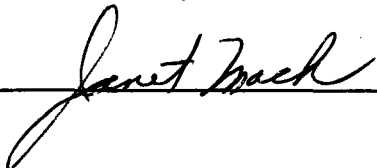
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 3rd day of October , 1977, she served the within  
Notice of Decision by (certified) mail upon William Friedman  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. William Friedman  
170 Crabapple Road  
Manhasset, New York 11030

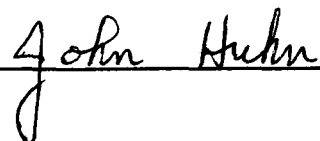
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

3rd day of October , 1977.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
WILLIAM FRIEDMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (2) 23 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1963 through 1973.

State of New York  
County of Albany

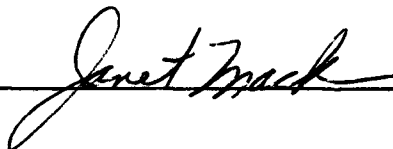
John Huhn, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 3rd day of October, 1977, she served the within  
Notice of Decision by (certified) mail upon Alvin E. Goidel,  
Esq. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Alvin E. Goidel, Esq.  
127 John Street  
New York, New York 10038

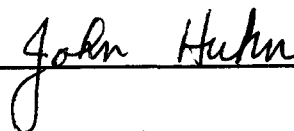
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

3rd day of October, 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

**October 3, 1977**

**Mr. William Friedman  
170 Crabapple Road  
Manhasset, New York 11030**

**Dear Mr. Friedman:**

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 Chyrywaty  
Hearing Examiner**

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  | : |          |
| WILLIAM FRIEDMAN                                  | : | DECISION |
| for Redetermination of a Deficiency or for Refund | : |          |
| of Unincorporated Business Tax under Article 23   | : |          |
| of the Tax Law for the Years 1963 through 1973.   | : |          |

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Petitioner, William Friedman, 170 Crabapple Road, Manhasset, New York 11030, 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 through 1973 (File Nos. 13887 and 13888).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1977 at 9:15 A.M. Petitioner appeared pro se and by Alvin I. Goidel, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a sales representative during the years 1963 through 1973 was subject to the unincorporated business tax.

FINDINGS OF FACT

1. On April 12, 1974 and October 28, 1974, the Income Tax Bureau issued notices of deficiency against petitioner for the years 1963 through 1969 and 1970 through 1973, respectively, imposing unincorporated business taxes upon the income he received from his activities as a sales representative.

2. During the years in issue, petitioner was a shoe salesman representing only Weber Shoe Company, Inc. ("Weber"). He was forbidden to represent any other principals. He did not have a written employment contract with Weber.

3. Petitioner's activities as a sales representative consisted of making sales to existing and prospective customers within the territory assigned to him by Weber. He was restricted as to the styles of shoes he could sell and the prices for which he could sell them. He was required to be in Weber's showroom one day per week and during "showtime" periods which occurred two to three weeks a year. He was required to complete weekly work and route sheets and was given sales quotas by Weber.

4. Petitioner was paid by Weber on a commission basis. His principal withheld Federal income taxes and social security taxes from the commissions paid him. However, said principal did not withhold New York State income taxes from him. Petitioner was a member of Weber's Blue Cross Health Insurance Plan and the company's pension plan.

5. Petitioner was not reimbursed for the expenses he incurred in the performance of his sales activities. He maintained an office at his home, and claimed the office expenses as well as other expenses also incurred in connection with his sales activities, as miscellaneous deductions on his New York State income tax returns for the years in issue.

CONCLUSIONS OF LAW

A. That the income received by petitioner, William Friedman, from Weber Shoe Company, Inc. during the years 1963 through 1973, constituted compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with section 703(b) of the Tax Law.

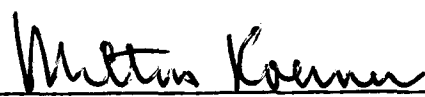
B. That the petition of William Friedman is granted and the notices of deficiency issued April 12, 1974 and October 28, 1974 are cancelled.

DATED: Albany, New York

October 3, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER