

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH HELMRICH

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) ~~xxxPeriod(s)~~ 1968 :
through 1972.

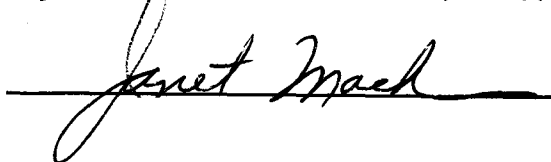
State of New York
County of Albany

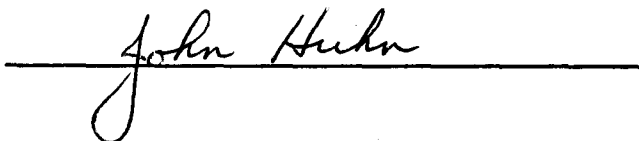
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December , 1977, she served the within
Notice of Decision by (certified) mail upon Joseph Helmrich
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph Helmrich
Evergreen Row
Windmill Farm
Armonk, New York 10504
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

13th day of December , 19 77





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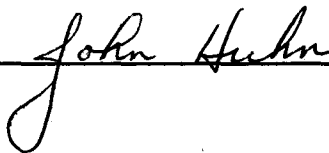
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December , 19 77, she served the within
Notice of Decision by (certified) mail upon Robert N. Lang, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert N. Lang, CPA
c/o Goldberg Bros. & Co.
342 Madison Avenue
New York, NY 10017
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

13th day of December , 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

December 13, 1977

Joseph Melurich
Evergreen Row
Windmill Farm
Armonk, New York 10504

Dear Mr. Melurich:

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,

John J. Sollesito
Director

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH HELMRICH :
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years :
1968 through 1972. :

Petitioner, Joseph Helmrich, Evergreen Row, Windmill Farm, Armonk, New York 10504, 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 1968 through 1972. (File No. 00501).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 15, 1976 at 2:45 P.M. Petitioner appeared by Robert N. Lang, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner, Joseph Helmrich, acted as an independent contractor carrying on an unincorporated business, or as an employee of Hanover Mills, Inc. and its affiliated companies during the years 1968 through 1972.

FINDINGS OF FACT

1. Petitioner, Joseph Helmrich, and his wife filed New York State resident income tax returns for the years 1968, 1969, 1970, 1971 and 1972. He did not file New York State unincorporated business tax returns for said years.

2. On March 25, 1974, the Income Tax Bureau issued statements of audit changes and notices of deficiency against petitioner, Joseph Helmrich, imposing unincorporated business taxes upon the income received by him for his activities as a salesman during the years 1968 through 1972 in the sum of \$22,578.87.

3. On July 23, 1973, the State Tax Commission issued its decision in the Matter of the Petition of Joseph Helmrich, the petitioner herein, for redetermination of a deficiency or for refund of unincorporated business tax for the years 1966 and 1967, in which the State Tax Commission denied said petition based upon its determination that "the income received by the petitioner, Joseph Helmrich, from the firms he represented during the years 1966 and 1967 constituted income from his regular business of selling textiles and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law."

4. One of the findings of facts in said decision of the State Tax Commission, issued as aforesaid on July 23, 1973, is that "petitioner, Joseph Helmrich, conducted a sales business under the name of Helmrich Textile Company during the years 1966 and 1967."

5. The New York State income tax return filed by the petitioner and his wife for the year 1968 reported in Schedule "A" thereof that the petitioner received \$88,170.00 in "Business Income (Sales Representative)." No "wages, salaries, tips, etc." were reported in said Schedule "A" as having been received by the petitioner for the year 1968.

6. The New York State income tax returns filed by the petitioner and his wife for the years 1969, 1970, 1971 and 1972, reported in Schedule "A" thereof for each of said years that the petitioner received "wages, salaries, tips, etc." and "Business Income (Sales Representative)" as follows:

Wages, Salaries, Tips, etc.	<u>1969</u> \$33,333.00	<u>1970</u> \$50,000.00	<u>1971</u> \$45,833.00	<u>1972</u> \$54,167.00
Business Income (Sales Representative)	\$29,448.00	\$20,109.00	\$23,429.00	\$52,903.00

Petitioner filed Federal Schedules "C" for the years 1968 through 1972 and reported thereon net business income of \$88,170.00, \$29,448.00, \$20,109.00, \$23,429.00 and \$52,903.00, respectively. Petitioner's accountant, Goldberg Bros. & Company, notified the Income Tax Bureau in a letter dated July 9, 1975 that the petitioner received business gross income from his principals during the years 1968 through 1972 of \$102,898.00, \$38,839.00, \$29,167.00, \$33,862.00 and \$66,047.00, respectively.

7. During the years 1968 through 1972, Hanover Mills, Inc. was a corporate entity engaged in the business of manufacturing and selling synthetic yarns. During said period, it was affiliated or associated with four other companies, namely Milo Mills, Inc., Hillsborough Textile Company, Malkinet and Falk Fibres and Fabrics, Inc. During said period, said affiliated or associated companies were engaged in various aspects of the textile business and together with Hanover Mills, Inc., were controlled by members of the Falk family. Said affiliated or associated companies of Hanover Mills, Inc. are hereafter sometimes referred to as the "Falk Group."

8. Prior to 1968, petitioner was involved in the yarn business for many years. He had sales contacts and an understanding of the business. However, since Hanover Mills, Inc. had been operating for less than a year in 1968, it lacked the experience and understanding of the sale of yarn at that time. Therefore, petitioner entered into an oral agreement with Charles Falk, president of Hanover Mills, Inc. in 1968, whereby the petitioner would sell and market the yarn which Hanover Mills, Inc. manufactured, as it was felt that such arrangement could contribute to the effectiveness of each of the parties. For his sales and marketing efforts, petitioner was to receive a commission of 5% of the amount of sales effected by him against which a drawing would be paid to him by Hanover Mills, Inc. of \$25,000.00 a year at the rate of \$500.00 a month.

9. In connection with the performance of said agreement, the petitioner rented an office at 52 Park Avenue, New York, New York. He signed a lease therefore for a term of two or three years and hired a secretary for said office.

10. The rent of said office and all other expenses incurred in connection with the conduct of said office, including telephone service and the salary of the petitioner's secretary, were paid for by Hanover Mills, Inc. and by Milo Mills, Inc., one of the aforesaid companies in the Falk Group, the officers of which were also the officers of Hanover Mills, Inc.

11. Petitioner contended that in 1969, the aforesaid oral agreement between himself and Hanover Mills, Inc. and its affiliated companies was changed and that another oral agreement was made between the parties whereby petitioner would receive annually a commission override of 1% of sales and a drawing of \$50,000.00. Petitioner further contended that the \$33,330.00 he received from his aforesaid principals during the year 1969 and the \$50,000.00 a year he received for the years 1970 through 1972 was salary income.

12. Petitioner contended that in or about 1971, Hanover Mills, Inc. together with Hillsborough Textile Company, one of the aforesaid companies in the Falk Group, leased offices at Sixth Avenue and 40th Street, New York, New York. The aforesaid lease of an office at 52 Park Avenue was terminated, and the petitioner was moved from 52 Park Avenue to said offices at Sixth Avenue and 40th Street, where he was provided with an office by Hanover Mills.

13. Hanover Mills, Inc. deducted both withholding and social security taxes from the amounts of draw (except commissions) paid by it to the petitioner for the years 1969, 1970, 1971 and 1972. Hanover Mills, Inc. included the petitioner in its profit sharing and its life and health insurance plans.

14. Hanover Mills, Inc. defined the territory within which the petitioner could solicit sales, the principal territory within which the petitioner was authorized by it to visit or call upon accounts being North and South Carolina and the City of New York.

15. Petitioner handled no accounts other than those of Hanover Mills, Inc. and its affiliated companies during the period from 1968 through 1972. He was restricted by Hanover Mills, Inc. from selling other lines for principals other than Hanover Mills, Inc. without its knowledge and consent.

16. From time to time the petitioner received requests for reports from Hanover Mills, Inc., made reports to Hanover Mills, Inc. and, in consultation with Hanover Mills, Inc., determined the times for his visits to its plants in North and South Carolina. Although petitioner contended that his activities were supervised and controlled by Michael and Charles Falk, officers of the Falk Group, his principals did not exercise any substantial supervision or control over his sales activities or techniques or the time he devoted to sales, except to limit his territory and to restrict him from selling for principals other than Hanover Mills, Inc. and its affiliated companies, without said principals' consent.

17. Prior to the making of the petitioner's aforesaid agreement with Hanover Mills, Inc., Joseph Helmrich became a participant in a "Keogh" plan and continued membership therein subsequent to the making of said agreement to and including 1972.

18. On the Federal schedule "C" which petitioner filed for 1972, he listed his principal business activity as "Sales Representative" and his business name and address as "Helmrich Textiles, 350 5th Avenue, New York, New York 10001." Petitioner claimed deductions for business expenses on said Federal schedule "C" for such items as rent on business property, insurance, legal and professional fees, advertising, auto expenses, dues and subscriptions, office supplies and expenses, telephone, entertainment and promotion, gifts, local transportation, parking fees and tolls, secretarial services, samples and traveling.

19. One of petitioner's business cards listed his name in large print in the center of the card and the names, Hanover Mills, Inc. and Hillsborough Textiles, Inc. in small print in the lower left-hand corner of the card. Petitioner's other business card listed his name in the center of the card in large print and the names, Falk Fibers and Fabrics, Inc. and Hanover Mills, Inc. in small print in the lower left-hand corner of the card.

CONCLUSIONS OF LAW

A. That petitioner's activities during the years 1968 through 1972, on behalf of Hanover Mills, Inc. or other companies in the Falk Group, and his activities in connection with an acquisition for Chelsea

Industries, constituted the carrying on of an unincorporated business as an independent contractor and not services as an employee within the meaning and intent of section 703(b) of the Tax Law.

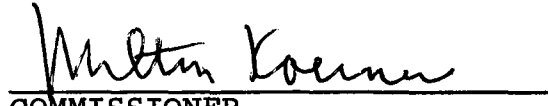
B. That the income petitioner received from his principals during the years in question, including the amounts he reported as wages, salaries, tips, etc., constituted income from his textile sales business which is subject to unincorporated business tax.

C. That the petition of Joseph Helmrich is denied and the Notice of Deficiency issued March 25, 1974 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York
December 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER