

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ELAINE HYMAN

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) :  
1969, 1970, 1971 and 1972

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 18th day of January, 1977, she served the within  
Notice of Decision by (certified) mail upon Elaine  
Hyman (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Elaine Hyman  
200 C. Winston Drive  
Cliffside Park, New Jersey 07010

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

18th day of January, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ELAINE HYMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (a) 23 of the :  
Tax Law for the Year(s) or Period(s) :  
1969, 1970, 1971 and 1972

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 18th day of January, 1977, she served the within  
Notice of Decision by (certified) mail upon Charles I.  
Mandell, P.A. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Charles I. Mandell, P.A.  
2726 Church Avenue  
Brooklyn, New York 11226

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

18th day of January, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

January 18, 1977

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

Elaine Hyman  
200 C. Winston Drive  
Cliffside Park, New Jersey 07010

Dear Ms. Hyman:

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

Please take further notice that pursuant to  
Section(§) **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	:	
ELAINE HYMAN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969, 1970, 1971 and	:	
1972.	:	

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Petitioner, Elaine Hyman, 200 C. Winston Drive, Cliffside Park, New Jersey 07010, 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 1969, 1970, 1971 and 1972. (File No. 2-25469927).

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 August 25, 1976, at 10:45 A.M. Petitioner appeared by Charles I. Mandell, P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Was the income derived from petitioner, Elaine Hyman's activities as a sales representative during the years 1969, 1970, 1971 and 1972 subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Elaine Hyman, filed New York State income tax resident returns for the years 1969, 1970, 1971 and 1972. On these returns she listed her occupation as self-employed-sales. She did not file unincorporated business tax returns for said years.

2. On May 19, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Elaine Hyman, imposing additional personal income tax due and imposing an unincorporated business tax on the income derived from her activities as a sales representative.

3. Petitioner, Elaine Hyman, was a dress designer and sales woman during the years 1969 through June, 1971, for Lady Tina, Inc., and for the remainder of 1971, she represented Jessica Fashions in a similar capacity. During the time Lady Tina, Inc. was her principal, she made sales for them under the trade name "Elaine-0." At no time did she represent more than one principal. She was required to report at the offices and showroom of her principals daily by 9:00 A.M. She would then take the line of clothing that she was selling and call on retailers in New York City until noon. She returned to the offices and showroom daily after lunch and would either make sales by phone, wait on customers that appeared in the showroom or design women's clothing. She designed this clothing by purchasing original dresses of renowned

designers and having them altered to her own liking. She bore the expense of the clothing purchases and the cost of alterations. She designed these dresses for the purpose of increasing her commission earnings.

4. Petitioner, Elaine Hyman, had no employment contract. She did not maintain an office in her home and had no employees. During the years 1969 through 1972, Lady Tina, Inc. or Jessica Fashions, Inc., did not withhold Federal or New York State income taxes or social security tax from the commissions paid to petitioner, Elaine Hyman. They did not reimburse her for any of her business expenses. She deducted expenses incurred in connection with her designing and sales activities on Schedule "C" of her Federal income tax return. The firms for whom she designed and sold merchandise did not exercise any substantial control or supervision over her designing or sales activities or techniques or over the time she devoted to these activities.

#### CONCLUSIONS OF LAW

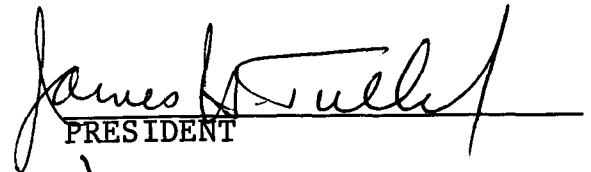
A. That the income received by petitioner, Elaine Hyman, from the firms she represented during 1969, 1970, 1971 and 1972, constituted income from her regular course of business of designing and selling clothing as an independent contractor and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the activities of petitioner, Elaine Hyman, during the years 1969, 1970, 1971 and 1972, constituted the carrying on of an unincorporated business and her income derived therefrom was subject to the unincorporated business tax in accordance with section 703 of the Tax Law.

C. That the petition of Elaine Hyman is denied and the Notice of Deficiency issued May 19, 1975, is sustained.

DATED: Albany, New York  
JANUARY 18, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER