

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH MARPET

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)~~ :  
1970, 1971 and 1972.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of April , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Joseph Marpet

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. Joseph Marpet  
Sherwood Road  
Pound Ridge, New York 10576

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

26th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH MARPET

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~xx~~ ~~xxxxxx~~ :  
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 26th day of April , 1977 , she served the within  
Notice of Decision by (certified) mail upon Herbert Adler

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Herbert Adler, Esq.  
50 East 42nd Street  
New York, New York 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

26th day of April , 1977.

Bruce Batchelor

Janet M. M.



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. Joseph Marpet  
Sherwood Road  
Round Ridge, New York 10576

Dear Mr. Marpet:

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. Puccio*  
**Frank J. Puccio**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
JOSEPH MARPET :  
for Redetermination of Deficiency or for :  
Refund of Unincorporated Business Taxes :  
under Article 23 of the Tax Law for the :  
Years 1970, 1971 and 1972. :  
:

Petitioner, Joseph Marpet, residing at Sherwood Road, Pound Ridge, New York 10576, filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1970, 1971 and 1972 (File No. 2-26020827). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1976 at 1:15 p.m. Petitioner appeared with his representative, Herbert Adler, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

Did the selling activities of petitioner, Joseph Marpet, during the years 1970, 1971 and 1972 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Joseph Marpet, filed New York State personal income tax returns for the years 1970, 1971 and 1972. He indicated his occupation as "manufacturers representative" and reported his income as business income. Petitioner, Joseph Marpet, did not file unincorporated business tax returns for said years. The Income Tax Bureau held that petitioner, Joseph Marpet, was self-employed and that the income resulting from his activities as a manufacturer's representative was subject to unincorporated business tax. A Notice of Deficiency was issued July 28, 1975 to petitioner, Joseph Marpet, for the years 1970, 1971 and 1972 in the amount of \$1,652.49 unincorporated business tax due, plus \$345.97 interest, for a sum of \$1,998.46.

2. Petitioner, Joseph Marpet's income for the years in question was as follows:

| <u>PRINCIPAL</u>     | <u>1970</u>        | <u>1971</u>        | <u>1972</u>        |
|----------------------|--------------------|--------------------|--------------------|
| Fraser's (WMF)       | \$18,714.87        | \$18,462.77        | \$15,083.66        |
| Hallie St. Mary B.C. | 6,227.56           | 8,382.38           | 11,095.52          |
| Rotadyne             | 1,254.59           | --                 | --                 |
| Studio One           | 701.70             | --                 | --                 |
| Gould                | --                 | 251.43             | 290.25             |
|                      | <u>\$26,898.72</u> | <u>\$27,096.58</u> | <u>\$26,469.43</u> |

3. Petitioner, Joseph Marpet, contended that he was a commission salesman employed by WMF of America, Inc., Frasers Division, hereafter referred to as Frasers. He sold table and gift wares in an assigned territory. He was required to attend Frasers' sales meetings and sales shows. He was provided desk space, telephone and secretarial

service at the corporation's two showroom locations. Petitioner, Joseph Marpet, employed no assistants and was required to meet production standards. He was covered by Fraser's group medical and life insurance plans.

4. Frasers did not withhold social security, Federal and New York State taxes from petitioner, Joseph Marpet's, compensation. He was permitted to represent and sell for other principals. There was no specific division of time amongst the principals for promotion and sales of their respective products.

5. No evidence regarding petitioner, Joseph Marpet's other employers was introduced at the hearing.

6. Petitioner, Joseph Marpet, filed Federal schedule C in which he reported total income, from all employers and deducted incurred selling expenses. He financed his own retirement plan and maintained an office in his home.

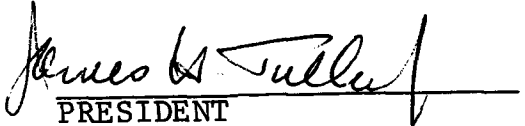
#### CONCLUSIONS OF LAW

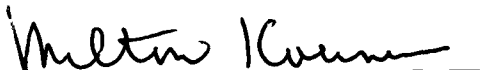
A. That the income received by petitioner, Joseph Marpet, from the firms he represented during the years 1970, 1971 and 1972 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the petition of Joseph Marpet is denied and the Notice of Deficiency issued July 28, 1975, is sustained.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER