

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD MYMAN

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) ~~or Period(s)~~ :  
1967, 1968, 1969, 1970, 1971, 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 14th day of April , 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Donald Myman  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Donald Myman  
8510 Avenue N  
Brooklyn, 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~~  
~~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

14th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD MYMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(22)~~ 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1967, 1968, 1969, 1970, 1971, 1972 & 1973.

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 14th day of April, 1977, he served the within  
Notice of Decision by (certified) mail upon Jacob Goldman

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

Jacob Goldman, Esq.  
122 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

14th 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 14, 1977

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

Mr. Donald Hyman  
8510 Avenue N  
Brooklyn, New York

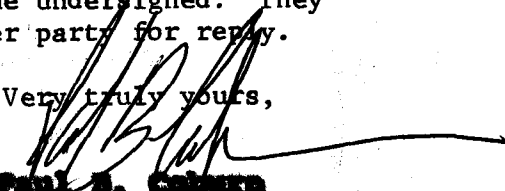
Dear Mr. Hyman:

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

Please take further notice that pursuant to  
Section(8) **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,

  
**Paul S. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD MYMAN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
a Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1967, 1968, 1969, 1970, 1971, 1972	:	
and 1973.	:	
	:	

---

Petitioner, Donald Myman, residing at 8510 Avenue N, Brooklyn, New York, has filed a petition for the redetermination of a deficiency or for a refund of unincorporated business taxes for the years 1967 to 1973 inclusive. (File No. 00265).

A formal hearing was held before Edward Goodell, Hearing Officer, at the office of the State Tax Commission, Two World Trade Center, New York, New York, on October 13, 1976, at 10:45 A.M.

The petitioner, Donald Myman, appeared by Jacob Goldman, Esq. The Income Tax Bureau of the Department of Taxation and Finance appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the petitioner, in his relationship to the Marathon Co., during the years 1967 to 1973 inclusive, was an independent

contractor subject to the unincorporated business tax or an employee thereof and, therefore, not subject to the unincorporated business tax.

FINDINGS OF FACT

1. The Marathon Co. located in Attleboro, Massachusetts, was engaged during the years 1967 to 1973 inclusive, in the business of manufacturing gold-filled and sterling silver jewelry and of selling such jewelry to wholesalers thereof in various parts of the United States.

2. The petitioner's relationship with the Marathon Co. began in the year 1967 and continued thereafter to and including the year 1973 pursuant to oral agreement made with the President of the Marathon Co.

3. Under the terms of the agreement with the Marathon Co., the petitioner, as the sales representative of the Marathon Co., engaged during the years 1967 to 1973 inclusive, in the sale of gold-filled and sterling silver jewelry manufactured by it, to wholesalers thereof, located in approximately fifteen or sixteen states and, in addition in the area known as Metropolitan New York.

4. As compensation for his services as sales representative of the Marathon Co., the petitioner received from the Marathon Co., a commission of 8½% based upon sales effected by him and, on

account of commissions earned by the petitioner as aforesaid, the Marathon Co. paid to him a drawing once a month that ranged from \$1200 a month at the beginning of the petitioner's relationship with the Marathon Co. in 1967 to the sum of \$1800 as the said relationship continued to and including 1973.

5. The Marathon Co. had no office in New York City during the years 1967 to 1973 inclusive, but the petitioner in connection with the rendition of his services as its sales representative, rented office space in New York City during the years 1967 to 1973 inclusive, initially at 87 Nassau Street, subsequently at 1 West 47th Street and finally at 580 Fifth Avenue, which said office spaces were used by the petitioner for receiving messages, for the storage of records, for the display of Marathon Co.'s sample line to prospective customers and for the sale of Marathon's merchandise to buyers thereof.

6. The telephone service for said offices was listed in the petitioner's name and the petitioner's letterhead displayed his name and not that of the Marathon Co.

7. The petitioner paid the rent for said offices as well as other expenses incurred by him in connection with the conduct of said offices and in the conduct of his activities away from said offices as sales representative of the Marathon Co., except that the Marathon Co. paid for part of the expenses incurred by the petitioner for the entertainment of customers of the Marathon Co.

8. Although, the petitioner was privileged to represent principals other than the Marathon Co. during the years 1967 to 1973 inclusive, he did not represent any principal during said period other than the Marathon Co.

9. The Marathon Co. limited the area of the petitioner's activity as its sales representative during the years 1967 to 1973 inclusive, to the territory that it allocated or assigned to the petitioner, to wit, the aforesaid fifteen or sixteen states and the Metropolitan area of New York and authorized sales representatives other than the petitioner to engage in the sale of jewelry in territories other than the territory allocated or assigned to the petitioner.

10. The Marathon Co. did not deduct either withholding or social security taxes from the commissions or drawings paid by it to the petitioner as its sales representative during the years 1967 to 1973 inclusive.

11. For the years 1967 to 1973 inclusive, the petitioner filed New York State income resident returns, known as Form IT-201, each of which stated in Schedule "A" thereof for each of said years that the income therein reported by the petitioner was "business income" and not "wages" or "salaries".

12. In connection with each of his Federal Income Tax Returns for the years 1967, 1968 and 1969, the petitioner filed Schedule "C" (Form 1040), entitled "Profit (or loss) from Business or Profession (Sole Proprietorship)" in which he stated that "his principal business activity" was that of "sales representative" and set forth the amounts of "his gross receipts or gross sales", his "gross profit", his "business deductions" and his "net profit" for each of said years from said business.

13. In connection with his Federal Income Tax Returns, the petitioner filed Schedule SE (Form 1040) for the "Computation of Social Security Self-Employment Tax".

14. The petitioner has been "covered by a Keogh plan since 1967". a plan "available only to people who are self-employed".

15. In response to a letter of inquiry, dated September 27, 1971, addressed by the Income Tax Bureau of the New York State Department of Taxation and Finance to the petitioner, the petitioner responded by letter dated October 7, 1971 in which he stated, in part, that "My principals exercised no supervision and control over my sales activities".

16. The Marathon Co. by its principals did not exercise control over the manner in which the petitioner performed his work as its sales representative during the years 1967 to 1973 inclusive.



CONCLUSIONS OF LAW

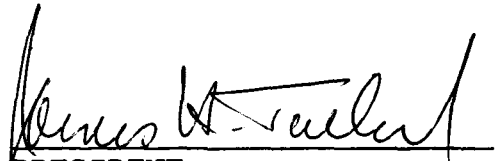
A. During the years 1967 to 1973 inclusive, the petitioner, Donald Myman, in his capacity as a sales representative of the Marathon Co., acted as an independent contractor and not as its employee.

B. The petitioner, Donald Myman, is subject to the unincorporated business tax for the years 1967 to 1973 inclusive.

C. The petitions of Donald Myman are denied and the notices of deficiency issued on November 2, 1972 and October 28, 1974, with respect to the years 1967 to 1973 inclusive, are sustained.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA-26 (4-76) 25M

**FORMAL HEARING**

**STATE OF NEW YORK**

**Department of Taxation and Finance**

**TAX APPEALS BUREAU**

**STATE CAMPUS**

**ALBANY, N. Y. 12227**

*103 JACOB  
N.Y. 10017*

**FORWARDED**

Jacob Goldman, Esq.  
122 East 42nd Street  
New York, New York 10017

~~NEW YORK, N.Y. 10017~~

*NO 6/0?*

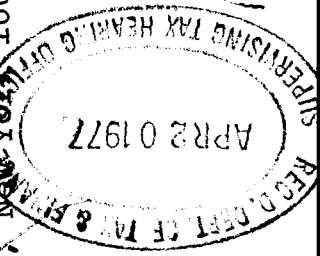
*Room?*

*A/C*

*UNKNOWN*

*ADDRESSE*

*RT-23 SR 19M*



**CERTIFIED**

**No. 401514**

**MAIL**





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 14, 1977

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

Mr. Donald Myman  
8510 Avenue N  
Brooklyn, New York

Dear Mr. Myman:

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

Please take further notice that pursuant to  
Section(8) **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,

**Paul B. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD MYMAN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
a Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1967, 1968, 1969, 1970, 1971, 1972	:	
and 1973.	:	

---

Petitioner, Donald Myman, residing at 8510 Avenue N, Brooklyn, New York, has filed a petition for the redetermination of a deficiency or for a refund of unincorporated business taxes for the years 1967 to 1973 inclusive. (File No. 00265).

A formal hearing was held before Edward Goodell, Hearing Officer, at the office of the State Tax Commission, Two World Trade Center, New York, New York, on October 13, 1976, at 10:45 A.M.

The petitioner, Donald Myman, appeared by Jacob Goldman, Esq. The Income Tax Bureau of the Department of Taxation and Finance appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the petitioner, in his relationship to the Marathon Co., during the years 1967 to 1973 inclusive, was an independent

contractor subject to the unincorporated business tax or an employee thereof and, therefore, not subject to the unincorporated business tax.

FINDINGS OF FACT

1. The Marathon Co. located in Attleboro, Massachusetts, was engaged during the years 1967 to 1973 inclusive, in the business of manufacturing gold-filled and sterling silver jewelry and of selling such jewelry to wholesalers thereof in various parts of the United States.

2. The petitioner's relationship with the Marathon Co. began in the year 1967 and continued thereafter to and including the year 1973 pursuant to oral agreement made with the President of the Marathon Co.

3. Under the terms of the agreement with the Marathon Co., the petitioner, as the sales representative of the Marathon Co., engaged during the years 1967 to 1973 inclusive, in the sale of gold-filled and sterling silver jewelry manufactured by it, to wholesalers thereof, located in approximately fifteen or sixteen states and, in addition in the area known as Metropolitan New York.

4. As compensation for his services as sales representative of the Marathon Co., the petitioner received from the Marathon Co., a commission of 8½% based upon sales effected by him and, on

account of commissions earned by the petitioner as aforesaid, the Marathon Co. paid to him a drawing once a month that ranged from \$1200 a month at the beginning of the petitioner's relationship with the Marathon Co. in 1967 to the sum of \$1800 as the said relationship continued to and including 1973.

5. The Marathon Co. had no office in New York City during the years 1967 to 1973 inclusive, but the petitioner in connection with the rendition of his services as its sales representative, rented office space in New York City during the years 1967 to 1973 inclusive, initially at 87 Nassau Street, subsequently at 1 West 47th Street and finally at 580 Fifth Avenue, which said office spaces were used by the petitioner for receiving messages, for the storage of records, for the display of Marathon Co.'s sample line to prospective customers and for the sale of Marathon's merchandise to buyers thereof.

6. The telephone service for said offices was listed in the petitioner's name and the petitioner's letterhead displayed his name and not that of the Marathon Co.

7. The petitioner paid the rent for said offices as well as other expenses incurred by him in connection with the conduct of said offices and in the conduct of his activities away from said offices as sales representative of the Marathon Co., except that the Marathon Co. paid for part of the expenses incurred by the petitioner for the entertainment of customers of the Marathon Co.

8. Although, the petitioner was privileged to represent principals other than the Marathon Co. during the years 1967 to 1973 inclusive, he did not represent any principal during said period other than the Marathon Co.

9. The Marathon Co. limited the area of the petitioner's activity as its sales representative during the years 1967 to 1973 inclusive, to the territory that it allocated or assigned to the petitioner, to wit, the aforesaid fifteen or sixteen states and the Metropolitan area of New York and authorized sales representatives other than the petitioner to engage in the sale of jewelry in territories other than the territory allocated or assigned to the petitioner.

10. The Marathon Co. did not deduct either withholding or social security taxes from the commissions or drawings paid by it to the petitioner as its sales representative during the years 1967 to 1973 inclusive.

11. For the years 1967 to 1973 inclusive, the petitioner filed New York State income resident returns, known as Form IT-201, each of which stated in Schedule "A" thereof for each of said years that the income therein reported by the petitioner was "business income" and not "wages" or "salaries".



12. In connection with each of his Federal Income Tax Returns for the years 1967, 1968 and 1969, the petitioner filed Schedule "C" (Form 1040), entitled "Profit (or loss) from Business or Profession (Sole Proprietorship)" in which he stated that "his principal business activity" was that of "sales representative" and set forth the amounts of "his gross receipts or gross sales", his "gross profit", his "business deductions" and his "net profit" for each of said years from said business.

13. In connection with his Federal Income Tax Returns, the petitioner filed Schedule SE (Form 1040) for the "Computation of Social Security Self-Employment Tax".

14. The petitioner has been "covered by a Keogh plan since 1967". a plan "available only to people who are self-employed".

15. In response to a letter of inquiry, dated September 27, 1971, addressed by the Income Tax Bureau of the New York State Department of Taxation and Finance to the petitioner, the petitioner responded by letter dated October 7, 1971 in which he stated, in part, that "My principals exercised no supervision and control over my sales activities".

16. The Marathon Co. by its principals did not exercise control over the manner in which the petitioner performed his work as its sales representative during the years 1967 to 1973 inclusive.

CONCLUSIONS OF LAW

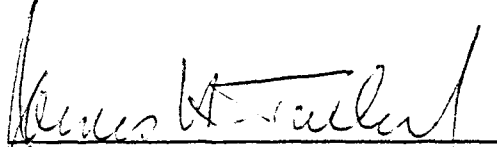
A. During the years 1967 to 1973 inclusive, the petitioner, Donald Myman, in his capacity as a sales representative of the Marathon Co., acted as an independent contractor and not as its employee.

B. The petitioner, Donald Myman, is subject to the unincorporated business tax for the years 1967 to 1973 inclusive.

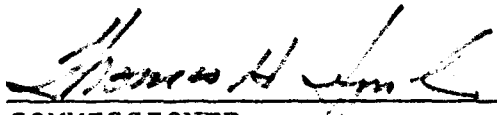
C. The petitions of Donald Myman are denied and the notices of deficiency issued on November 2, 1972 and October 28, 1974, with respect to the years 1967 to 1973 inclusive, are sustained.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER