

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STUART ROSENBERG

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Stuart Rosenberg

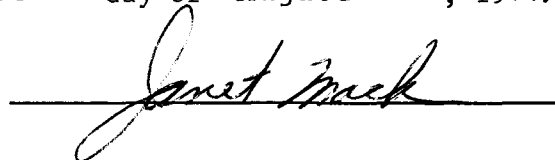
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Stuart Rosenberg  
18 Deer Path Lane  
Syosset, New York 11791

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)~~  
~~xxxxxx~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

24 day of August, 1977.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STUART ROSENBERG

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Bernard L. Resh

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Bernard L. Resh  
299 Broadway  
New York, New York 10007

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

24 day of August, 1977.

Marsina Donnini

Janet Buck



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**August 24, 1977**

**Mr. Stuart Rosenberg  
18 Deer Path Lane  
Syosset, New York 11791**

**Dear Mr. Rosenberg:**

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) **690 & 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 :  
STUART ROSENBERG : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income and Unincorporated :  
Business Taxes under Articles 22 and 23 of the :  
Tax Law for the Years 1968, 1969, 1970, 1971 :  
and 1972. :

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Petitioner, Stuart Rosenberg, residing at 18 Deer Path Lane, Syosset, New York 11791, has filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1968, 1969, 1970, 1971 and 1972. (File Nos. 13385 and 14266).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on September 23, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Bernard L. Resh. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the income received by the petitioner, Stuart Rosenberg, during the years 1968, 1969, 1970, 1971 and 1972,

from his activities as a sales representative was subject to the unincorporated business tax or whether he was an employee exempt from the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Stuart Rosenberg, is not contesting the \$1,000.00 adjustment of business expenses claimed for the year 1970.

2. During the year 1968, the petitioner, Stuart Rosenberg, was employed as a commission salesman for British Crown Imports, Inc. In or about June of 1968, he terminated his employment with said company and became employed as a salesman and a sales manager at C.B.S. and its affiliate Clark and Young Company on a salary basis. In the latter part of said year, he terminated his employment with said companies and became employed by Miller Bros. Hat Company as a salesman on a salary basis. The petitioner, Stuart Rosenberg, was also employed by Raleigh Manufacturers, Inc. during the years 1968 and 1969 as a commission salesman for whom, he states, services were performed on evenings and weekends. British Crown Import, Inc. and Raleigh Manufacturing, Inc. did not reimburse petitioner for the selling expenses he incurred.

3. During the year 1970, the petitioner, Stuart Rosenberg, terminated his employment with Miller Bros. Hat Company, Inc. and commenced working for Standard Garments, Inc. as a salesman and as a sales manager on a salary basis continuing for the years 1971 and 1972. During 1971, petitioner was away from home 100 days and

deducted for Federal and New York State income tax purposes sales expenses of \$12,377.52 including expenses for the business use of his home, sample cases, etc. Petitioner indicated that he purchased some of the samples he used and was sometimes billed for such samples.

4. Petitioner, Stuart Rosenberg, during said years, was supplied with office space and a telephone, and was instructed as to the hours he was to work, the customers to call upon and the reports to be made to his supervisors for each of his principals.

5. Petitioner, Stuart Rosenberg, received income from Romak Underwear Co. Inc. during the years 1968, 1969, 1970, 1971 and 1972 in the amounts of \$11,424.84, \$24,109.45, \$21,434.00, \$12,000.00 and \$10,000.00 respectively, which he states were commissions from referrals of customers to that company while he was working at his other jobs.

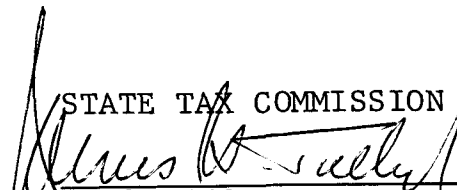
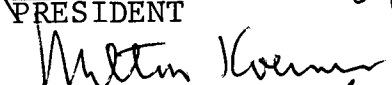
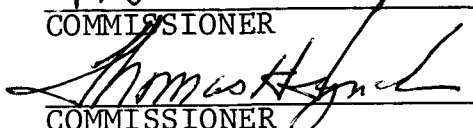
6. The income received by petitioner, Stuart Rosenberg, during the years 1968, 1969, 1970, 1971 and 1972, from Romak Underwear Co. Inc. constituted receipts from his regular business as a sales representative. The income petitioner received from British Crown Imports, Inc. and Charles Meyers & Co. during 1968 and from Raleigh Manufacturers Inc. during 1968 and 1969 also constituted receipts from his regular business as a sales representative.

7. The aforesaid activity of petitioner, Stuart Rosenberg, constituted the carrying on of an unincorporated business and his income derived therefrom is subject to unincorporated business tax in accordance with section 703 of the Tax Law.

8. The services rendered by petitioner, Stuart Rosenberg, during the years 1968, 1969, 1970, 1971 and 1972 as a salesman and sales manager of his employers was so integrated and inter-related with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him and, therefore, the salary income received by him for said years, from said companies, is also subject to the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

9. The petition of Stuart Rosenberg, is denied and the Notice of Deficiency in the sum of \$8,712.05 issued on December 23, 1974 is sustained together with such additional interest as may be legally owing.

DATED: Albany, New York  
August 24, 1977

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER