

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL W. and MAXINE SCHUR

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)~~ :
1966 through 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 20th day of May , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Michael W. & Maxine
Schur (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Michael W. Schur
12 Glenn Place
Hastings-on-Hudson, New York 10706
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

20th day of May , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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MICHAEL W. and MAXINE SCHUR

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of Unincorporated Business :
Taxes under Article (x) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966 through 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 20th day of May , 19 77, ~~he~~ served the within
Notice of Decision by (certified) mail upon Rocco DePalma

(representative of) the petitioner in the within proceeding,

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

Mr. Rocco DePalma
DePalma & Ettlinger
45 E. Putnam Avenue
Greenwich, Connecticut 06830

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

20th day of May , 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

May 20, 1977

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

Mr. & Mrs. Michael W. Schur
12 Glenn Place
Hastings-on-Hudson, New York 10706

Dear Mr. & Mrs. Schur:

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,
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

In the Matter of the Petition :
of :
MICHAEL W. and MAXINE SCHUR :
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Taxes :
under Article 23 of the Tax Law for the :
Years 1966 through 1972. :

Petitioners, Michael W. and Maxine Schur, residing at 12 Glenn Place, Hastings-on-Hudson, New York 10706, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1966 through 1972. (File No. 11757).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on August 26, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Rocco DePalma. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq., of counsel).

ISSUE

Whether petitioner Michael W. Schur's activities as a salesman during the years 1966 through 1972 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioners, Michael W. and Maxine Schur, filed New York State income tax returns for the years 1966 through 1972. Petitioner Michael W. Schur did not file New York State unincorporated business tax returns for said years.

2. On September 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Michael W. and Maxine Schur, imposing unincorporated business tax upon the income received by Michael W. Schur from his activities as a garment salesman during the years 1966 through 1972. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against petitioners in the sum of \$10,561.37 on September 30, 1974, and on March 13, 1975, issued two Notice and Demands against the petitioners with respect to the liabilities shown on the Notice of Deficiency. The Notice and Demand issued under account Number AD-483853 was for the years 1966, 1967 and 1968 and the Notice and Demand issued under account Number AD-483854 was for the years 1969, 1970, 1971 and 1972. The petitioners paid a portion of the liabilities shown on the two Notice and Demands and subsequently filed a petition for refund under section 689(c)(3) of the Tax Law.

3. Petitioner Michael W. Schur was a commission garment salesman for Natric Fabric Corporation during the year 1966, covering Michigan, Indiana, Kentucky and Ohio. During the years 1967 through 1972, petitioner represented Designers Originals as a commission salesman in its "Mid-Western" territory which also included Michigan, Indiana, Kentucky and Ohio. Although petitioner claimed that he was only employed by one employer at all times during the years in question and that he carried no sidelines, the schedules attached to his 1967, 1969 and 1970 New York State income tax returns indicated that he received commission income from Hollywood 5th Ave. Corporation as well as from Designers Originals during said years.

4. During 1966, petitioner Michael W. Schur received a weekly draw of \$200.00 against his commission income from Natric Fabric Corporation and during the years 1967 through 1972, he received a weekly draw of \$400.00 against his commission income from Designers Originals.

5. During the year 1966, Natric Fabric Corporation restricted Michael W. Schur's sales territory to an area which included Michigan, Indiana, Kentucky and Ohio. Designers Originals also restricted Mr. Schur's territory to the same area during the years 1967 through 1972. He traveled for approximately sixteen weeks per year for each of these principals and was required to report to the New York City offices and showrooms of

each principal when not traveling. Petitioner developed customers on his own in addition to servicing customers referred to him by his principals. Petitioner's principals did not exercise any substantial supervision or control over his sales activities or techniques except to limit his territory, to request him to call on certain accounts and to meet with certain buyers.

6. During the years 1966 through 1972, no Federal or New York State income taxes or social security taxes were withheld from the commission income paid to him. He was not covered by his principals for workmen's compensation, disability insurance or a pension plan. He was covered by a medical plan by Designers Originals. He was not reimbursed for any of the business expenses incurred in connection with his sales activities. He reported his income and business expenses with respect to his sales activities in the schedules "C" attached to his Federal returns for the years 1966 through 1972.

CONCLUSIONS OF LAW

A. That the petitioners, Michael W. and Maxine Schur, have not sustained the burden of proof to show that sufficient direction and control was exercised over Michael W. Schur's time and sales activities by his principals so as to result in an employer/employee relationship within the meaning and intent of section 703(b) of the Tax Law.

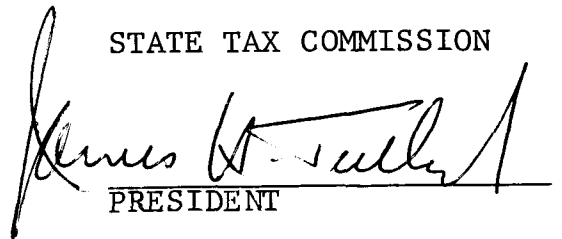
B. That the commission income received by Michael W. Schur during the years 1966 through 1972 constituted income from his regular business of selling.

C. That the sales activities of Michael W. Schur during the years 1966 through 1972 constituted the carrying on of an unincorporated business, and the income derived therefrom was subject to unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

D. That the petition of Michael W. and Maxine Schur is denied and the Notice and Demands issued March 13, 1975 are sustained.

DATED: Albany, New York
May 20, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER