

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NORBERT S. SHAPIRO

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) ~~xxx Period(x)~~ :  
1967, 1968, 1969, 1970, 1971, 1972 :  
and 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 27th day of April , 1977 , ~~she~~ served the within  
Notice of Decision by (certified) mail upon Norbert S. Shapiro

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Norbert S. Shapiro  
138 East Dover Street  
Valley Stream, NY 11580

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)~~  
~~xxxxx~~ 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

27th day of April , 1977

Janet Mack

Bruce Batchelor

STATE OF NEW YORK  
STATE TAX COMMISSION

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NORBERT S. SHAPIRO

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Tax Law for the Year(s) ~~on 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 27th day of April , 1977, he served the within  
Notice of Decision by (certified) mail upon Reuben J. Aronson

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Reuben J. Aronson  
350 Fifth Avenue  
New York, NY 10001

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

27th 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 27, 1977

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

Mr. Norbert S. Shapiro  
138 East Dover Street  
Valley Stream, NY 11580

Dear Mr. Shapiro:

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

Please take further notice that pursuant to  
Section **(a) 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 TAX COMMISSION

## ISSUES

I. Was the income derived from the petitioner, Norbert S. Shapiro's activities as a sales representative subject to the unincorporated business tax imposed under Article 23 of the Tax Law?

II. Did the petitioner, Norbert S. Shapiro, maintain a regular place of business outside New York State during the years 1967 through 1973?

FINDINGS OF FACT

1. Petitioner, Norbert S. Shapiro, and his wife, Irma, filed New York State income tax resident returns for the years 1967 through 1973. He did not file unincorporated business tax returns for these years.

2. On February 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Norbert S. Shapiro, for the years 1967, 1968 and 1969. A second Notice of Deficiency was issued on March 25, 1974 for the year 1970, and a third Notice of Deficiency was issued on September 29, 1975 for the years 1971, 1972 and 1973. The three deficiencies imposed unincorporated business tax on income derived from petitioner's activities as a sales representative.

3. During the years in question petitioner, Norbert S. Shapiro, was a traveling salesman engaged in the selling of dress fabric. He represented from ten to fifteen companies during each year. He arranged his own travel schedule which usually involved traveling at least four days a week and covered the Northeast portion of the United States. While he was away from home on overnight travel, he maintained a hotel or motel room. He did not maintain any permanent office space or business quarters outside New York State.

4. Although petitioner's daily activities were not generally directed, one of the principals he represented would occasionally require that he call on a particular customer.

5. Petitioner, Norbert S. Shapiro, received compensation for the sales he made on a commission basis. None of the principals he represented withheld any payroll taxes or pension plan payments. He was not reimbursed for expenses incurred in the course of conducting his business activities. The companies who he represented did not provide him with any office space.

6. Petitioner, Norbert S. Shapiro, filed Federal Schedule 1040 C profit or loss from business or profession for the years 1967 through 1973.

7. Petitioner, Norbert S. Shapiro, contends that he was an employee of each of the firms he represented. He also contends that the motel or hotel rooms he occupied while outside New York State constituted a regular place of business and that the income attributable to those locations should be excluded from his total New York unincorporated business gross income.

8. Petitioner, Norbert S. Shapiro, was advised by his accountant that he was not required to file unincorporated business tax returns for the years in issue.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Norbert S. Shapiro, from firms he represented during the years 1967 through 1973 constituted income from his regular course of business and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the

meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Norbert S. Shapiro, during the years 1967 through 1973 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.

C. That the petitioner, Norbert S. Shapiro, did not maintain a regular place of business outside New York State and is therefore not entitled to allocate his unincorporated business gross income as provided in section 707(a) of the Tax Law.

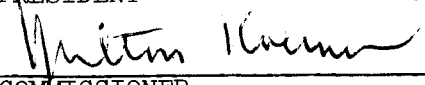
D. That the petitioner, Norbert S. Shapiro, had reasonable cause for not filing unincorporated business tax returns for the year 1967 through 1973; and therefore, the penalties assessed for the year 1970, pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are waived.

D. That the petition of Norbert S. Shapiro is granted to the extent the penalties imposed by sections 685(a)(1) and 685(a)(2) of the Tax Law in the sum of \$275.12 for the year 1970 are cancelled, and that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 25, 1974 and that except as so granted the petition is in all other respects denied.

DATED: Albany, New York  
April 27, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER