

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BENJAMIN DICKERT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Unincorporated Business** :
Taxes under Article ~~(*)~~ 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1969, 1970 and 1971.

State of New York
County of Albany

John Huhn, 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 17th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon Benjamin Dickert

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

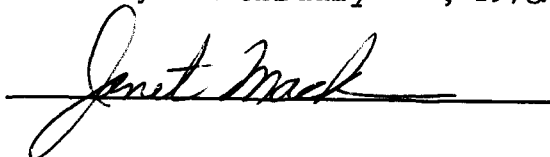
as follows: Mr. Benjamin Dickert
1230 Avenue Y
Brooklyn, New York 11235

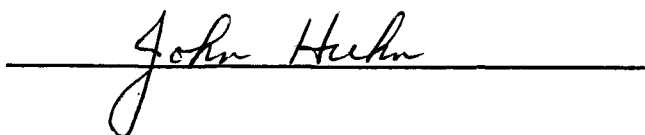
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of~~) 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

17th day of February, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition . . .
:
of :
:
BENJAMIN DICKERT : 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)~~ :
1969, 1970 and 1971.

State of New York
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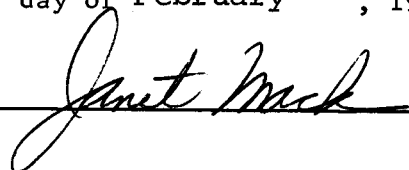
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of February , 1978, he served the within
Notice of Decision by (certified) mail upon Alvin I. Goidel

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alvin I. Goidel, Esq.
Goidel, Goidel & Helfenstein, P.C.
127 John Street
New York, New York 10038
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

17th day of February , 1978.







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

February 17, 1978

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

**Mr. Benjamin Dickert
1230 Avenue Y
Brooklyn, New York 11235**

Dear Mr. Dickert:

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 **(a) 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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

BENJAMIN DICKERT

DECISION

for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Years 1969, 1970 and 1971.

Petitioner, Benjamin Dickert, residing at 1230 Avenue Y,
Brooklyn, New York 11235, filed a petition for redetermination
of a deficiency or for refund of unincorporated business tax
under Article 23 of the Tax Law for the years 1969, 1970 and 1971
(File No. 10797).

A small claims hearing was held before Philip Mercurio,
Hearing Officer, at the offices of the State Tax Commission, Two
World Trade Center, New York, New York, on May 24, 1977 at 9:15 A.M.
The petitioner appeared by Alvin I. Goidel, Esq. The Income Tax
Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq.,
of counsel).

ISSUE

Whether the income received by petitioner from his activities
as a sales representative during the years 1969, 1970 and 1971,
was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Benjamin Dickert, and his wife timely filed New York State resident income tax returns for the years 1969, 1970 and 1971. He did not file unincorporated business tax returns for said years.

2. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, imposing unincorporated business tax upon the income received by him on the grounds that his selling activities during the years 1969, 1970 and 1971 constituted the carrying on of an unincorporated business.

3. Petitioner, Benjamin Dickert, was a furniture sales representative of Braxton Culler, Inc. during the years 1969, 1970 and 1971. He did not represent any other firm during the aforesaid years.

4. Petitioner was paid on a commission basis. Braxton Culler, Inc. did not deduct Federal and state withholding taxes or social security taxes from his commission income. He was not reimbursed for expenses incurred in connection with his selling activities.

5. Petitioner was required to devote his full time and effort to selling merchandise for Braxton Culler, Inc. He was required to attend periodic trade shows, to submit periodic reports, and to

restrict his sales efforts to a specific territory. In addition, he was given sales quotas and was required to sell at the firm's showroom once a week.

6. The firm that the petitioner represented during the years 1969, 1970 and 1971 determined all policies of sales regarding prices, credit terms and shipping dates.

CONCLUSIONS OF LAW

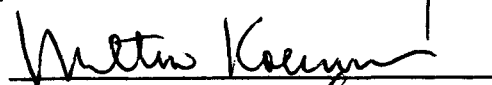
A. That Braxton Culler, Inc. exercised sufficient direction and control over petitioner's selling activities during the years 1969, 1970 and 1971 to create an employer-employee relationship, within the meaning and intent of section 703(b) of the Tax Law. Therefore, the income which petitioner derived from his selling activities during said years is not subject to unincorporated business tax.

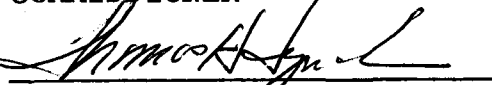
B. That the petition of Benjamin Dickert is granted and the Notice of Deficiency issued on December 22, 1975 in the sum of \$2,796.48 is cancelled.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER