

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID KIMMEL AND DORIS KIMMEL

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) 23 of the :
Tax Law for the Year(s) or Period(s) :
1967 through 1970

State of New York
County of Albany

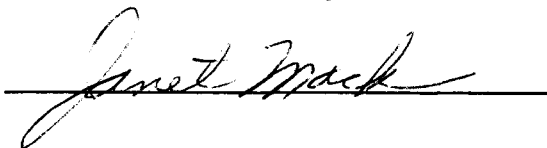
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 19 78, she served the within
Notice of Decision by (certified) mail upon David Kimmel and
Doris Kimmel (XXXXXXXXXXXXXXXXXXXX) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: David Kimmel and Doris Kimmel
4555 Bonovista Avenue
Montreal, Province of Quebec, Canada

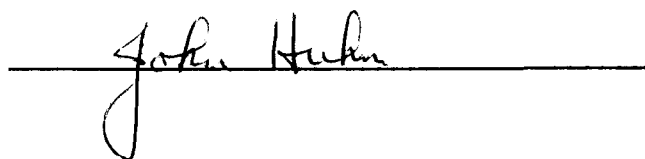
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (XXXXXXXXXXXX)
(XXXXXXXX) petitioner herein and that the address set forth on said wrapper is the
last known address of the (XXXXXXXXXXXXXXXXXXXX) petitioner.

Sworn to before me this

14th day of February , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID KIMMEL AND DORIS KIMMEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (8) 23 of the :
Tax Law for the Year(s) or Period(s) :
1967 through 1970

State of New York
County of Albany

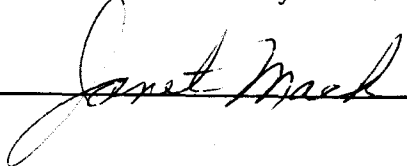
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978 , he served the within
Notice of Decision by (certified) mail upon Edward C. Levine, CPA

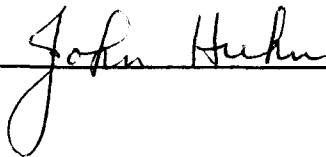
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edward C. Levine, CPA
Laventhol and Horwath
919 Third Avenue
New York, NY 10022
and by depositing same enclosed in a postpaid properly addressed wrapper 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 February , 1978.







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

February 14, 1978

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

David Kimmel and Doris Kimmel
4555 Bonovieta Avenue
Montreal, Province of Quebec, Canada

Dear Mr. & Mrs. Kimmel:

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) **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,

Aloysius J. Mendez
Assistant Director

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID KIMMEL AND DORIS KIMMEL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967 through 1970.	:	

The petitioners, David Kimmel and Doris Kimmel, his wife, residing at 4555 Bonovista Avenue, Montreal, Province of Quebec, Canada, 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 1967 through 1970 (File No. 12166).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 21, 1977 at 1:15 P.M.. The petitioners appeared by Edward C. Levine, CPA.. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

I. Whether the petitioner, Doris Kimmel, a housewife, is liable for unincorporated business tax.

II. Whether David Kimmel's activities as a salesman during the years in issue constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. The petitioners, David Kimmel and Doris Kimmel, his wife, filed joint New York State income tax resident returns for the years 1967 through 1970. Mr. Kimmel did not file any unincorporated business tax returns for the aforementioned years.

2. On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes to the petitioners for the years 1967, 1968 and 1969, imposing unincorporated business taxes in the amount of \$4,751.20, plus penalties under section 685(a)(1) and 685(a)(2) of \$1,699.36 and interest of \$1,616.50, for a total of \$8,067.06. On the same date, the Income tax Bureau issued to petitioners a Statement of Audit Changes for the year 1970, imposing unincorporated business taxes in the amount of \$2,398.44, with penalties of \$1,115.28 and interest of \$569.94, for a total of \$4,083.66. Accordingly, on March 31, 1975, a Notice of Deficiency was mailed to the petitioners in the amount of \$12,150.72. The petitioners timely filed a petition for redetermination or for refund of said deficiency.

3. During the years in issue the petitioner, Doris Kimmel, was a Housewife and had no separate income. She was not engaged in any business activity.

4. During the years in issue the petitioner, David Kimmel, was a salesman. He represented New York Pad (and its subsidiary, Abetta Products) and Metro Edition in the sale of shoulder pads. He also represented Utica Thread Co., John Solomon, Balsom G. Corp. and Julius Cohen & Sons in the sale of non-competitive threads. His customers consisted of contractors and manufacturers of men's clothing and outerwear manufacturers. He was permitted to carry non-competitive lines which could be sold to the same customers he normally called upon. Only New York Pad withheld Federal and New York State income taxes on the commissions paid him. He was not reimbursed by any of his principals for any expenses incurred by him in connection with his sales activities.

5. The firms for whom the petitioner, David Kimmel, sold merchandise did not exercise any control or supervision over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell. There was no agreement between Mr. Kimmel's principals as to the division of his time and effort.

6. The petitioners paid the unincorporated business taxes assessed and now seek a refund thereof.

CONCLUSIONS OF LAW

A. That the petitioner, Doris Kimmel, was not liable for any unincorporated business tax during the years in issue; that the Income Tax Bureau is directed to delete her name from the Notice of Deficiency.

B. That the commission income received by the petitioner, David Kimmel, from the firms he represented during the years 1967 through 1970 constituted income from his regular business of selling shoulder pads and threads, and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the intent and meaning of section 703(b) of the Tax Law.

C. That the aforesaid activities of petitioner, David Kimmel, during the years 1967 through 1970 constituted the carrying on of an unincorporated business subject to unincorporated business tax in accordance with the provisions of section 703 of the Tax Law.

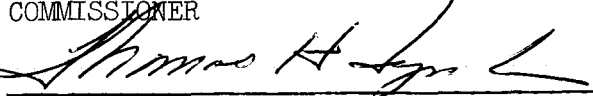
D. That the petition of David Kimmel and Doris Kimmel is granted to the extent indicated in Conclusion of Law "A", supra, and that except as so granted, the petition in all other respects denied.

DATED: Albany, New York
February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER