

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARTWIG KORNICKER

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) ~~or Period(s)~~ :
1969 and 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 20th day of September , 1978, she served the within
Notice of Decision by (certified) mail upon Hartwig Kornicker

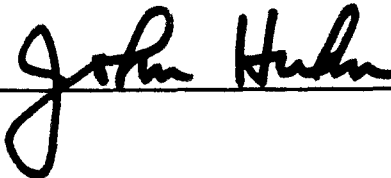
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Hartwig Kornicker
239 Central Park West
New York, New York 10024

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 September , 1978



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State of New York
County of Albany

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age, and that on the 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon Mr. Morris Birnbaum, CPA

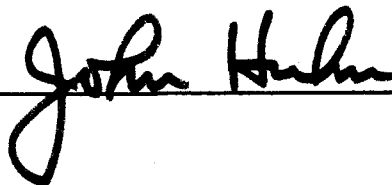
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Morris Birnbaum, CPA
160 Broadway
New York, New York 10038

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(post office or official depository) under the exclusive care and custody of
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Sworn to before me this

20th day of September , 1978.





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

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

September 20, 1978

Mr. Hartwig Kornicker
239 Central Park West
New York, New York 10024


Dear Mr. Kornicker:

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,


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 :

HARTWIG KORNICKER :

DECISION

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

Petitioner, Hartwig Kornicker, 239 Central Park West, New York, New York 10024, 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 and 1970 (File No. 01473).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 29, 1977 at 2:45 P.M. Petitioner appeared pro se and by Morris Birnbaum, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's selling activities during the years 1969 and 1970 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Hartwig Kornicker, filed New York State personal income tax returns for the years 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's selling activities during the years 1969 and 1970 constituted the carrying on of an unincorporated business. Therefore, it issued a Notice of Deficiency on January 29, 1973 in the amount of \$1,213.78 in unincorporated business tax, plus \$442.51 in penalty and \$166.13 in interest, for a total due of \$1,822.42.

3. Petitioner sold garments on a commission basis for at least three principals in 1969 and for four principals in 1970. The principals had no agreement regarding either a division of petitioner's time or the supervision and control of his day-to-day activities. Petitioner's principals did not deduct Federal and New York State withholding and social security taxes from his compensation. His principals did not cover him for any employee benefit programs. He was free to represent other principals and he could take vacations and days off at will.

4. Petitioner's principals did not reimburse him for any of the business expenses he incurred. He maintained an office in his home where he transacted business by telephone during the evening. In 1969 petitioner's commission income totaled \$37,951.88 and his business expense adjustment was \$18,104.88. His deductions for business expenses included amounts for customer allowances, loss on returns of merchandise, sample insurance and sample maintenance. In 1970 his commissions totaled \$39,182.32 and his business expense adjustment was \$18,943.40.

CONCLUSIONS OF LAW

A. That the selling activities of petitioner, Hartwig Kornicker, during the years 1969 and 1970 constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

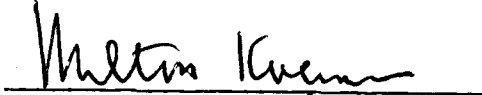
B. That the petition of Hartwig Kornicker is denied and the Notice of Deficiency issued January 29, 1973 in the sum of \$1,822.42 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

to...Secretary to the State Tax Commission

Re-
Decision Mailed

10/25/78

M-75 (5/76)

TA-26 (4-76) 25M

RECEIVED
JUL 11 1977

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK NO.

12240

☐ HOLD

DATE

9-28

1ST NOTICE

9-28

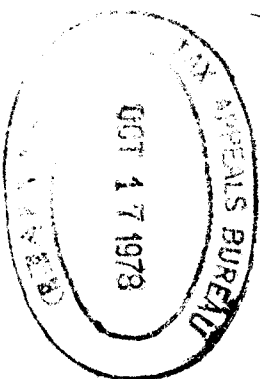
2ND NOTICE

10-7

RETURN

Detached from
PS Form 3849-A
July 1977

Mr. Hartwig Kornicker
239 Central Park West
New York, New York 10024



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STATE TAX COMMISSION

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Taxes under Article ~~(x)~~ 23 of the :
Tax Law for the Year(s) ~~xxxxxx~~ :
1969 and 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 25 day of October , 1978, he served the within
Notice of Decision by ~~(xxxxxx)~~ mail upon Hartwig Kornicker

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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

25th day of October , 1978

[Signature]

John Huhn