

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN MARNER

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) ~~1969 and 1970~~ :
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 14th day of February , 19 78, he served the within
Notice of Decision by (certified) mail upon Norman Marner

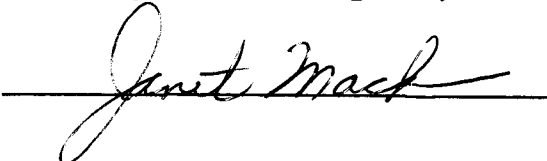
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Norman Marner
3 Robin Way
Great Neck, New York 11023

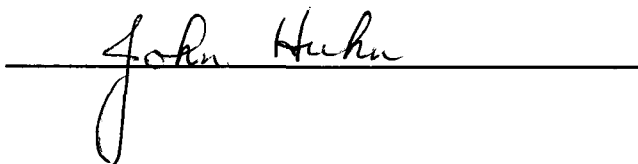
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

In the Matter of the Petition

of

NORMAN MARNER

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 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 14th day of February , 1978, he served the within
Notice of Decision by (certified) mail upon Edwin Shor
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edwin Shor, CPA
Russell & Shor
26 Court Street
Brooklyn, New York 11242
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

Janet Mack

John Huhn



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

Mr. Norman Marner
3 Robin Way
Great Neck, New York 11023

Dear Mr. Marner:

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 **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	:	
	:	
NORMAN MARNER	:	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, Norman Marner, residing at 3 Robin Way, Great Neck, New York 11023, 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. 14237).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 14, 1977 at 1:15 P.M. The petitioner appeared by Edwin Shor, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman during the years 1969 and 1970 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Norman Marner, filed New York State income tax resident returns for the years 1969 and 1970. However, he did not file unincorporated business tax returns for these years.

2. On February 9, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, asserting unincorporated business tax in the sum of \$1,644.45 on the income derived from his activities as a salesman for the years 1969 and 1970. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency on November 26, 1973.

3. Petitioner was a traveling salesman for the firm of Georges Briard, Inc. He was compensated for the sales he made on a commission basis. His principal did not withhold any payroll taxes, nor did it reimburse him for the selling expenses he incurred.

4. Georges Briard, Inc. restricted the petitioner's sales territory and required that he file a weekly report. It did not exercise any control over his sales endeavors, nor did it control or regulate the manner in which petitioner attempted to solicit business.

5. Georges Briard, Inc. required the petitioner to pursue collections and customer's complaints, as well as attend its

showroom at certain times. He was also required to attend, organize and pay for exhibits at trade shows conducted within his sales territory.

6. Petitioner was permitted to sell a noncompeting line of merchandise for the firm of Cobell, Inc. Petitioner conceded that the income derived from his selling activities for Cobell, Inc. was subject to unincorporated business tax.

7. The firms that petitioner represented did not control the time or effort which he expended in conducting his sales activities.

CONCLUSIONS OF LAW

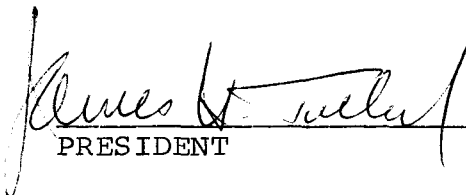
A. That sufficient direction and control was not exercised over the activities of the petitioner by Georges Briard, Inc. to result in an employee-employer relationship, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the activities of petitioner, Norman Marner, during the years 1969 and 1970 constituted the carrying on of an unincorporated business. Therefore, the income derived from his selling activities for Georges Briard, Inc. and Cobell, Inc. was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That the petition of Norman Marner is denied and the Notice of Deficiency issued on November 26, 1973 in the sum of \$2,657.94 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER