

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EMANUEL MATTHEWS

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) ~~XXXXXXX~~ :
1968, 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 24th day of April, 1978, he served the within
Notice of Decision by (certified) mail upon Howard Denburg, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Howard Denburg, Esq.
530 Fifth Avenue
New York City, New York 10036

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

24th day of April, 1978

[Signature]

John Huhn



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

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

April 24, 1978

**Emanuel Matthews
720 Fort Washington Avenue
New York, New York 10040**

Dear Mr. Matthews:

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 **(X) 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 CHYKYWATY
HEARING EXAMINER**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EMANUEL MATTHEWS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969 and 1970.	:	

Petitioner, Emanuel Matthews, 720 Fort Washington Avenue, New York, New York 10040, 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 1968, 1969 and 1970 (File No. 13796).

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 April 26, 1977 at 10:45 A.M. The petitioner appeared by Howard Denburg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman was subject to unincorporated business tax.

FINDINGS OF FACT

1. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Emanuel Matthews, on the grounds that the income derived from his activities during the years 1968, 1969 and 1970 was subject to unincorporated business tax.

2. Petitioner was a salesman of imported china, silver and glassware for Taris Imports, Inc. (hereinafter "Taris") during 1968. Taris merged with W.M.F. of America, Inc. (hereinafter "W.M.F.") as of January 1, 1969. Effective with the merger, petitioner became a salesman for the surviving firm. The terms of his relationship with W.M.F. were essentially the same as the terms of his relationship with Taris.

3. Petitioner was paid on a commission basis. Neither of petitioner's principals withheld payroll taxes from his compensation and he was not reimbursed for the business expenses he incurred. He was excluded from medical, retirement and fringe benefit plans available to other employees of Taris and W.M.F.

4. Petitioner was required to sell exclusively for the aforementioned firms at prices and terms which they specified. He was provided with office facilities, secretarial help and a limit to his sales territory.

5. Petitioner contended that he was supervised by W.M.F. in that the president of the firm would ask where he went and whom he saw. However, no restrictions were imposed on the time and effort petitioner devoted to sales on behalf of said principal. He also contended that he had been supervised to a similar extent by Taris. Petitioner failed to submit evidence to show that either of said principals exercised any substantial supervision and control over his sales activities.

6. In a letter dated October 16, 1973 to the Income Tax Bureau, the petitioner stated, "I am not now nor was ever an employee of Taris Imports, Inc. (W.M.F. of America, Inc.)..."

7. Petitioner maintained a retirement plan for the self-employed ("Keogh" plan) and paid self-employment taxes. Subsequently, petitioner incorporated, but continued to represent W.M.F. exclusively. As an employee of his own corporation, petitioner established and maintained an Individual Retirement Account (IRA).

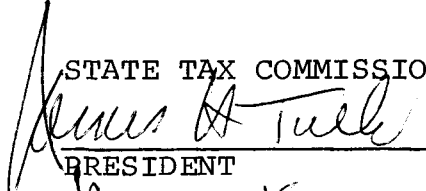
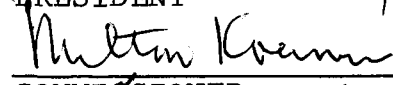
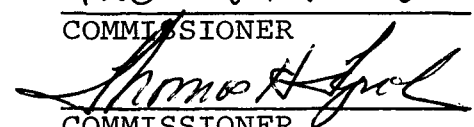
CONCLUSIONS OF LAW

A. That the income received by petitioner, Emanuel Matthews, from his selling activities during the years 1968, 1969 and 1970, constituted income from his regular business of selling 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 petition of Emanuel Matthews is denied and the Notice of Deficiency issued December 22, 1975 in the amount of \$2,196.78 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER