

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MOY MIR JOHN MORAVETZ

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 (1973) 1973 :
1973

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 17th day of February , 1978 , she served the within

Notice of Decision

by (certified) mail upon Moymir John Moravetz

~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Moymir John Moravetz

364 Cornwell Avenue

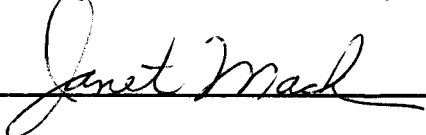
Malverne, New York 11565

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~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXX~~ 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

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

February 17, 1978

Moymir John Moravetz
364 Cornwell Avenue
Malverne, New York 11565

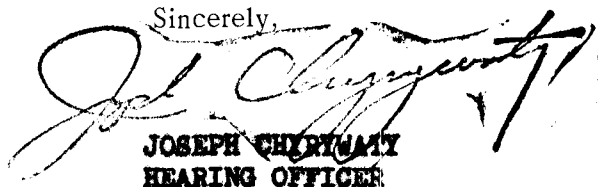
Dear Mr. Moravetz:

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 ~~XX~~ **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 CHERTKOFF
HEARING OFFICER

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Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MOYMIR JOHN MORAVETZ	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1973.	:	

Petitioner, Moymir John Moravetz, residing at 364 Cornwell Avenue, Malverne, New York 11565, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1973 (File No. 14183).

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 April 26, 1977 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the selling activities of petitioner during the year 1973 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Moymir John Moravetz, filed a joint 1973 New York State resident income tax return with his wife. He did not file a 1973 New York State unincorporated business tax return.

2. On January 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner imposing unincorporated business tax on his income from sales activities for the year 1973, on the grounds that said activities constituted the carrying on of an unincorporated business. Penalties under sections 685(a)(1) and 685(a)(2) of the Tax Law were also imposed against petitioner by the Statement of Audit Changes. In accordance with the aforesaid Statement, a Notice of Deficiency was issued against petitioner on December 22, 1975 in the sum of \$651.62.

3. During the year at issue, petitioner was an outside salesman performing services for eight principals on a commission basis.

4. The principals did not withhold taxes or social security from petitioner's compensation, nor did they provide any employee benefits.

5. Petitioner was not reimbursed for any of the expenses incurred by him on behalf of his principals, but he filed a Federal Schedule "C" to claim these expenses. He was not furnished office space, but he was permitted to work for others. Petitioner also made payments to a "Keogh plan".

6. Petitioner was not required to work specific hours for any of the principals he represented. There was no agreement among the principals as to the time petitioner was to devote to any one principal.

Although petitioner was subject to control or direction by his principals regarding the results obtained from his sales activities, they did not exercise any control or direction over the sales techniques or methods he used in obtaining such results.

CONCLUSION OF LAW

A. That the selling activities of petitioner, Moymir John Moravetz, during the year 1973, constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law, and that the income derived therefrom was subject to unincorporated business tax.

B. That the petition of Moymir John Moravetz is denied and the Notice of Deficiency issued December 22, 1975 in the sum of \$651.62 is sustained, together with such additional interest as may be lawfully owing.

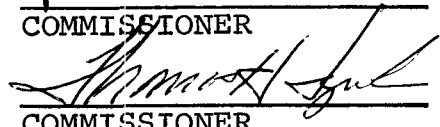
DATED: Albany, New York

February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER