

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MILTON PARIS

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

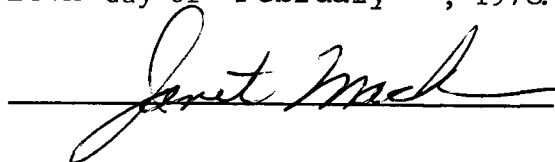
John Huhn , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of February , 1978, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Milton Paris  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Milton Paris  
3136 Wynsum Avenue  
Merrick, New York 11566

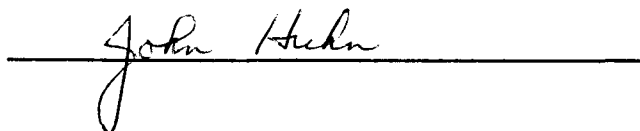
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

MILTON PARIS

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) ~~XXXXXXXXXX~~ :  
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 Bernard Lippert

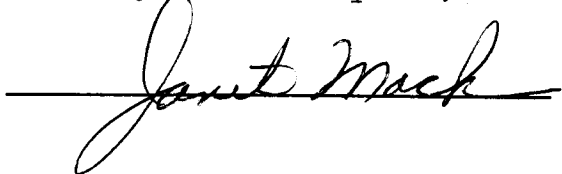
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Bernard Lippert, CPA  
10 East 40th Street  
New York, New York 10016

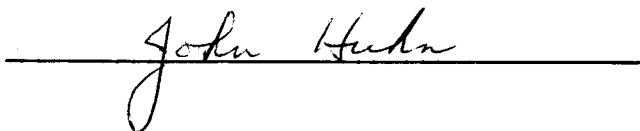
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

**Mr. Milton Paris**  
**3136 Wynsum Avenue**  
**Merrick, New York 11566**

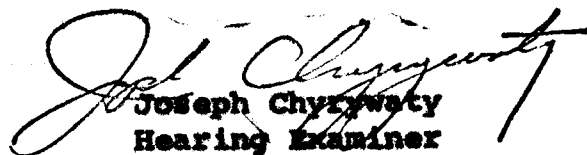
**Dear Mr. Paris:**

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 **(b) 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 Chyrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MILTON PARIS	:	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.	:	

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Petitioner, Milton Paris, 3136 Wynsum Avenue, Merrick, New York 11566, 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. 13349).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 21, 1977 at 9:15 A.M. The petitioner appeared by Bernard Lippert, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUES

I. Whether the activities of the petitioner, Milton Paris, during the years 1969 and 1970 constituted the carrying on of an unincorporated business.

II. If so, whether the petitioner had reasonable cause for failing to file a New York State unincorporated business tax return for the year 1969.

FINDINGS OF FACT

1. Petitioner, Milton Paris, and his wife filed New York State resident 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 issued statements of audit changes for the years 1969 and 1970 on December 7, 1972 and March 19, 1973, respectively. The statements asserted unincorporated business tax to be due, on the grounds that petitioner's activities as a sales representative constituted the carrying on of an unincorporated business. The Income Tax Bureau also asserted penalties pursuant to section 685(a)(1) and 685(a)(2) of the Tax Law for the year 1969. Accordingly, the Income Tax Bureau issued notices of deficiency on June 24, 1974.

3. During the years 1969 and 1970, Milton Paris was a sales representative selling bridal gowns and formal wear for three affiliated firms. These three firms were controlled by one principal.

4. Petitioner was paid by the firms he represented on a commission basis, with no withholding of payroll taxes. He paid

his own self-employment tax and was not covered by workmen's compensation or other employee-related programs. He reported his income and deducted his business expenses on Federal Schedule "C".

5. Petitioner, Milton Paris, did not have any written employment contract with his principal for the years at issue. The clerical staff's salaries and the telephone expenses incurred at the principal's showroom located in New York were charged to the petitioner's earned commissions. Petitioner received an override on the sales made by assistant salesmen; however, in the event that a salesman's drawing account exceeded his earned commissions at the time of termination of his relationship with the principal, this excess was charged against the petitioner's earned commissions.

6. Petitioner was instructed as to which customers to see. He was not permitted to open any new accounts or to call on stores other than those assigned by his principal. He was required to report weekly on the progress of his activities. He was enjoined from carrying lines of merchandise other than those of his principal. The office equipment and rental expenses were paid for by his principal.

7. Petitioner was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1969 and 1970.

CONCLUSIONS OF LAW

A. That sufficient direction and control was not exercised over petitioner's activities by his principal so as to result in an employee-employer relationship within the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of the petitioner, Milton Paris, during the years 1969 and 1970 constituted the carrying on of an unincorporated business, and that his income derived therefrom is subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That petitioner had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1969 and 1970 and, therefore, the penalties assessed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1969 are cancelled.

D. That the petition of Milton Paris is granted to the extent of cancelling the penalties imposed for the year 1969; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued on June 24, 1974 for the year 1969, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER