

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LOUIS RIEZMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (8) 23 of the :
Tax Law for the Year(s) or Period(s) :
1967-71

State of New York
County of Albany

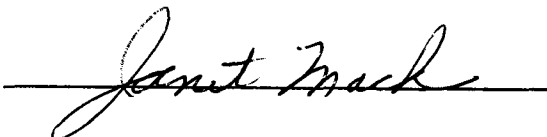
John Huhn

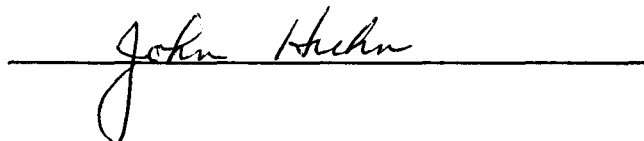
, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1978, she served the within
Notice of Decision by (certified) mail upon Alvin I. Goidel
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alvin I. Goidel, Esq.
127 John Street
New York, NY 10038
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
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For a Redetermination of a Deficiency or :
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Tax Law for the Year(s) or Period(s) :
1967- 71

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 14th day of February , 1978 , she served the within
Notice of Decision by (certified) mail upon Louis Riezman

~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,

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

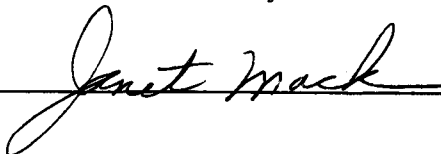
Louis Riezman
2104 Oliver Way
Merrick, NY 11566

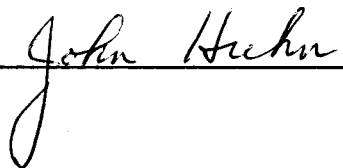
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative~~
~~XXXXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ 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

Louis Riesen
2104 Oliver Way
Harrick, NY 11366

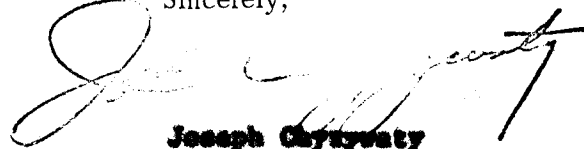
Dear Mr. Riesen:

Please take notice of the
of the State Tax Commission ~~Decision~~ 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 Chrysoasty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LOUIS RIEZMAN : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1967, 1968, 1969, 1970 and 1971. :
:

Petitioner, Louis Riezman, residing at 210⁴ Oliver Way, 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 1967 through 1971 (File Nos. 13381 and 14265).

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 May 26, 1977 at 10:45 A.M. Petitioner appeared by Alvin I. Goidel, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether income received by petitioner during the years 1967 through 1971 was derived from services performed by him as an employee, or whether said income was derived from the carrying on of an unincorporated business, thereby making it subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Louis Riezman, filed New York State personal income tax returns for the years 1967 through 1971, in which he reported his income as "wages" and his occupation as "traveling salesman". He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business. It based its contention on a New York State Tax Commission decision for a prior year in which petitioner's income (being derived from his activities as a salesman) was held subject to the unincorporated business tax. A Notice of Deficiency for the years 1967, 1968 and 1969 was issued on July 30, 1973, in the amount of \$2,410.75 in unincorporated business tax, plus \$552.34 in interest, for a total due of \$2,963.09. Another Notice of Deficiency for the years 1970 and 1971 was issued on January 27, 1975, in the amount of \$3,385.25 in unincorporated business tax, plus \$680.12 in interest, for a total due of \$4,065.37.

3. Petitioner was a children's wear salesman. He traveled about 20 weeks each year. Petitioner's principals and income for the years 1967 through 1971 were approximately as follows:

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Bambury Fashions, Inc.	\$29,283	\$ 2,192	-	-	-
Rainbow Girl Coat Co., Inc.	-	26,747	\$54,575	\$56,602	\$47,673
All Time Togs	1,253	-	-	-	-
Cavalier Label Co.	<u>-</u>	<u>5,767</u>	<u>5,330</u>	<u>10,835</u>	<u>12,257</u>
Total	\$30,536	\$34,706	\$59,905	\$67,437	\$59,930

4. During each of the years 1967 through 1971, petitioner had one major principal and one minor principal. During 1967 and until the beginning of February 1968, petitioner's major principal was Bambury Fashions, Inc. From February of 1968 through 1971, his major principal was Rainbow Girl Coat Co., Inc. Both principals treated petitioner in a similar manner. They paid him on a "drawings against commissions" basis and withheld Federal and New York State taxes and social security from his compensation. Petitioner was covered by workmen's compensation and disability insurance. He was included in his principals' pension plans. When not traveling, petitioner was required to work in his major principal's showrooms from 9:00 a.m. to 5:00 p.m. This amounted to approximately 30 weeks each year. Petitioner was under the supervision of either a sales manager or owner at all times. He was told when to travel, who to see and what items to promote. Petitioner had no control over credit approval or returns and was required to take vacations during approved periods. Petitioner's major principals permitted him to defray traveling expenses by carrying one minor principal while he was on the road, but not during the period in which he worked at his major principal's place of business. Petitioner's major principals limited the potential customers he could visit for his minor principal.

5. There was no withholding of any kind from petitioner's compensation, nor did his secondary principals exercise any control over his activities.

6. Petitioner contended that all of his expenses were incurred in connection with his activities on behalf of his major principals only. He deducted his unreimbursed expenses on Federal Schedule "C", but did not finance his own retirement plan. He never had an office of his own nor did he hire assistants.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Louis Riezman, during the years 1967, 1968, 1969, 1970 and 1971 from his major principals (Bambury Fashions, Inc. and Rainbow Girl Coat Co., Inc.) was derived from services performed by him in the capacity of an employee of said major principals, in accordance with the meaning and intent of section 703(b) of the Tax Law. Therefore said income is not subject to unincorporated business tax.

B. That the income received by petitioner, Louis Riezman, from his selling activities for his minor principals (All Time Togs and Cavalier Label Co.) during the years 1967 through 1971, constituted income derived from the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the unincorporated business income of petitioner, Louis Riezman, was too small to produce a tax for the years 1967, 1968 and 1969. The Income Tax Bureau is hereby directed to compute the unincorporated business tax due for the year 1970 on an adjusted unincorporated business net profit of \$10,835.00, and for the year 1971 on an adjusted unincorporated business net income of \$12,257.00.

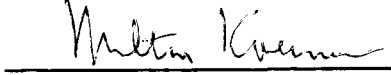
D. That the petition of Louis Riezman is granted to the extent determined herein and is in all other respects denied. The notices of deficiency, as modified, are sustained, together with such interest as may be lawfully owing.

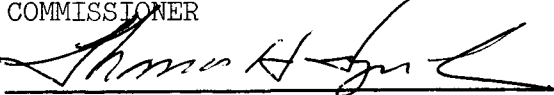
DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER