

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EMANUEL ROSENBAUM

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) ~~XXXX Period(s)~~ 1966, :
1967, 1968 and 1969.

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 13th day of September, 1978, ~~he~~ served the within

Notice of Decision by (certified) mail upon Emanuel Rosenbaum

~~(representative of)~~ the petitioner in the within proceeding,

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


as follows: Emanuel Rosenbaum
1225 Walnut Street
Uniondale, New York 11553

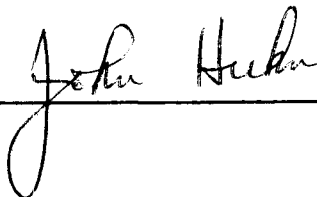
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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)~~ petitioner.

Sworn to before me this

13th day of September, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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EMANUEL ROSENBAUM

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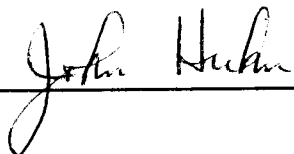
John Huhn, being duly sworn, deposes and says that
~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of September, 1978, ~~He~~ served the within
Notice of Decision by (certified) mail upon Bertrand Leopold
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bertrand Leopold
18 Joseph Street
New Hyde Park, New York 11040
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

13th day of September, 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

September 13, 1978

**Emanuel Rosenbaum
1225 Walnut Street
Uniondale, New York 11553**

Dear Mr. Rosenbaum:

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,

**MICHAEL ALEXANDER
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EMANUEL ROSENBAUM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966, 1967, 1968 and 1969.	:	

Petitioner, Emanuel Rosenbaum, 1225 Walnut Street, Uniondale, New York 11553, 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 1966, 1967, 1968 and 1969 (File No. 01371).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1976 at 9:15 A.M. Petitioner appeared by Bertrand Leopold, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioner's activities during the years 1966 through 1969 constituted an unincorporated business.

FINDINGS OF FACT

1. On January 29, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioner Emanuel Rosenbaum, for the years 1966 through 1969 in the amount of \$3,212.92, plus interest of \$664.21, for a total of \$3,877.13. This Notice of Deficiency was issued on the grounds that petitioner's activities during the years in issue constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax.

2. During the years at issue, petitioner, Emanuel Rosenbaum, was engaged in selling clothing for various manufacturers to retailers. Petitioner's territory with each such principal was concurrent with the territory of the other principals. Petitioner had an agreement with each principal whereby petitioner was the exclusive agent for the sale of each principal's products within that territory.

3. Petitioner worked exclusively for commissions. If he received a "draw" from a principal, it would be chargeable against future commissions. He did not receive and was not entitled to any fringe benefits of any kind. He never received a bonus. He did not receive, nor was he entitled to any retirement, health, life, or accident plan. He was and is, in fact, participating on his own in a "Keogh" plan. Similarly, though he could be discharged, his commissions could not be docked by a principal for any reason.

4. Petitioner was told by the principals to develop trade in the territory. Though subject to performance review, there was not that specific, detailed instruction of a kind usually associated with the supervision and control of an employee. Petitioner would return to their New York City headquarters about once a week.

5. The data on the various customers was and is in the possession of petitioner. If he were to terminate his relationship with a given principal, said data would remain with him.

6. The data is kept at petitioner's home where he maintains a desk. Exhibit "P" (a copy of petitioner's tax return for 1969), contains on Schedule "A" (Itemized Deductions), among other things, and entry "use of home as office" and a deduction therefor in the amount of \$305.00.

7. Petitioner's expenses for the years in question are his own estimations of what needed to be expended in the best interests of his activities. Petitioner personally bore the expenses of trade shows and full sample lines. He received no reimbursement whatever from his principals for any expenses.

8. Petitioner's expenses included such things as Christmas and Chanuka cards, lunches, dinners, gifts and florist expenses. The percentages of expenses relative to gross receipts (based on the figures compiled in Exhibit "H" for the years in issue) are as follows: 1966, expenses of twenty-five percent of gross receipts; 1967, expenses of twenty-four percent of gross receipts; 1968, expenses of thirty percent of gross receipts.

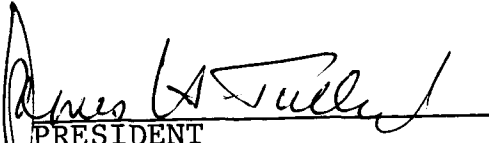
CONCLUSIONS OF LAW

A. That the activities of petitioner, Emanuel Rosenbaum, during the years 1966 through 1969 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law, and that the income derived therefrom is subject to unincorporated business tax.

B. That the petition of Emanuel Rosenbaum is denied and the Notice of Deficiency issued January 29, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER