

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIUS WEINBERG

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) ~~or Period(s)~~ :
1968, 1969 and 1970.

State of New York
County of Albany

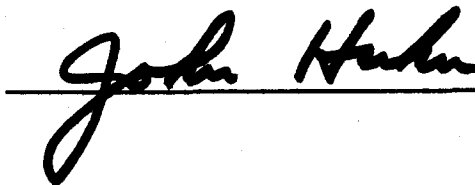
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of September , 1978, she served the within
Notice of Decision by (certified) mail upon Julius Weinberg
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Julius Weinberg
1424 Wilson Road
East Meadow, New York 11554
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

20th day of September , 1978.





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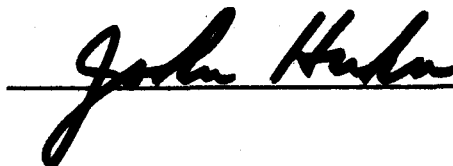
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon Ms. Evette S. Weinberg
and J.V. Weinberg (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ms. Evette S. Weinberg or Mr. Jerry V. Weinberg
555 Gorge Road
Cliffside Park, New Jersey 07010
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

20th 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 20, 1978

Mr. Julius Weinberg
1424 Wilson Road
East Meadow, New York 11554


Dear Mr. Weinberg:

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 **(e) 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 Chrysenty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JULIUS WEINBERG :
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, Julius Weinberg, 1424 Wilson Road, East Meadow, New York 11554, 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. 00233).

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 July 5, 1977 at 9:15 A.M. Petitioner appeared by Jerry Weinberg, Esq. and by Evette Weinberg, an accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman during the years 1968, 1969 and 1970 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Julius Weinberg, filed New York State income tax returns for the years 1968, 1969 and 1970; however, he did not file unincorporated business tax returns for said years.

2. On February 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner in the amount of \$868.38, plus penalty of \$346.59 and interest of \$180.82, for a total due of \$1,395.79. Said Notice was issued on the grounds that the income derived from petitioner's activities during the years 1968, 1969 and 1970 was subject to unincorporated business tax.

3. During the years 1968, 1969 and 1970, petitioner, Julius Weinberg, was a home improvement salesman for All Island Remodelers, Inc.

4. Petitioner was compensated by his principal on a commission basis. His principal did not withhold payroll taxes from his compensation and did not reimburse him for the business expenses he incurred. Petitioner's principal provided him with life insurance and medical insurance coverage, but did not cover him under a pension or profit-sharing plan.

5. All Island Remodelers, Inc. provided petitioner with office facilities, "leads", contracts and price lists. All contracts were subject to the firm's approval. Petitioner also maintained an office in his home from which he contacted prospective customers at times when his principal's office was not open.

6. Petitioner listed his occupation as "self-employed" and his business activities as "independent sales office" on his New York State income tax returns and Federal schedules "C" for the years in issue. In a letter to the Income Tax Bureau dated January 30, 1973, petitioner stated that during those years he (a) maintained "an independent selling office for the sale to home-owners of home improvement services to be rendered by those contracting for my independent sales services", (b) followed up leads submitted by his principal (as well as his own leads), engaging in door-to-door solicitation, all of which activities were conducted under his own direction and control, (c) had office and telephone expenses which he claimed as deductions on Federal schedules "C" which were incurred in connection with his independent selling office, (d) was free from direction and control over his selling activities by his principal and (e) was free to represent principals other than All Island Remodelers, Inc.

7. Petitioner testified at the hearing that during the years in issue he was an employee of All Island Remodelers, Inc., that he was not self-employed, that he did not maintain an independent selling office and that all of the statements made in the letter dated January 30, 1973 and set forth in Finding of Fact "6," above, were incorrect. Petitioner contended that although he signed said letter, his accountant was responsible for the allegations made therein.

Petitioner further contended that he paid his accountant to prepare his New York State income tax returns for the years in issue. However, said returns did not bear the signature of any preparer other than the taxpayer and no evidence was presented to show that petitioner paid accounting fees for the preparation of such returns.

8. Although All Island Remodelers, Inc. asserted some supervision over petitioner to assure itself that he was covering his territory and was visiting customers, said principal did not exercise any control over his sales endeavors, nor did it control or regulate the manner in which petitioner attempted to solicit business.

9. Petitioner filed Federal Schedule "C" and paid self-employment taxes during the years 1968, 1969 and 1970.

CONCLUSIONS OF LAW

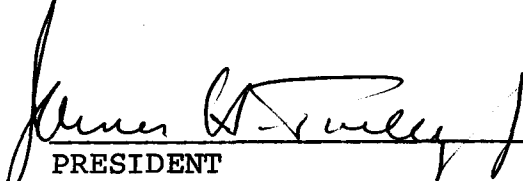
A. That All Island Remodelers, Inc. did not exercise sufficient direction and control over the activities of petitioner, Julius Weinberg, so as to result in an employee-employer relationship in accordance with the meaning and intent of section 703(b) of the Tax Law and 20 NYCRR 281.3.

B. That the income derived from petitioner's activities during the years 1968, 1969 and 1970 constituted income from his regular business of selling and was, therefore, subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

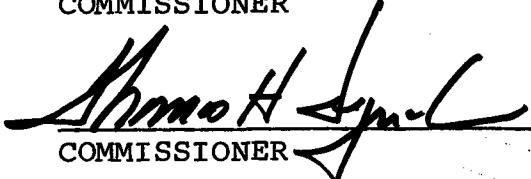
C. That the petition of Julius Weinberg is denied and the Notice of Deficiency issued February 25, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER