

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX and MARIE YAGER

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 Redetermined(s)~~ :
1970 and 1971

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 6th day of February , 19 78, he served the within
Notice of Decision by (certified) mail upon Max & Marie Yager

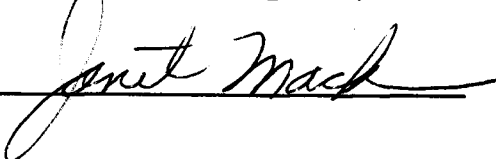
(~~representative of the~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Max Yager
P.O. Box 204
Little Neck, New York 11363

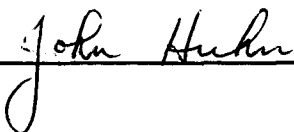
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of February , 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

February 6, 1978

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

Mr. & Mrs. Max Yager
P.O. Box 204
Little Neck, New York 11363

Dear Mr. & Mrs. Yager:

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(2) **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 Chyrywat
Hearing Examiner

cc: ~~Re: Honorary Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MAX and MARIE YAGER :
DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for:
the Years 1970 and 1971. :
:

Petitioners, Max and Marie Yager, P.O. Box 204, Little Neck, New York 11363, 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 1970 and 1971 (File No. 13856).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 26, 1977 at 1:15 P.M. Petitioner Max Yager appeared pro se and for his wife, petitioner Marie Yager. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the income derived from petitioner Max Yager's activities as a real estate salesman was subject to unincorporated business tax.

FINDINGS OF FACT

1. On August 26, 1974, the Income Tax Bureau issued a Notice of Deficiency against Max and Marie Yager for the years 1970 and 1971. Said notice was issued on the grounds that petitioners' income from real estate sales during the years 1970 and 1971 was subject to unincorporated business tax.

2. Petitioner Marie Yager was not involved in real estate sales activities during 1970 and 1971.

3. During the years in issue, petitioner Max Yager worked as a real estate salesman representing Eisenoff Realty, Inc. He was also a licensed real estate broker but did not operate in that capacity. As a real estate salesman, he was forbidden by law to represent any other realty organization or to make sales for his own account. He was furnished with office space and secretarial services by Eisenoff Realty, Inc. and was under their complete supervision and control.

4. Petitioner Max Yager did not maintain an office of his own nor did he employ assistants.

5. Petitioner Max Yager received compensation from Eisenoff Realty, Inc. on a commission basis. Eisenoff Realty, Inc. did not withhold any State or Federal taxes, nor did it reimburse him for expenses. During 1970 and 1971, Max Yager maintained a "Keogh" retirement plan.

CONCLUSIONS OF LAW

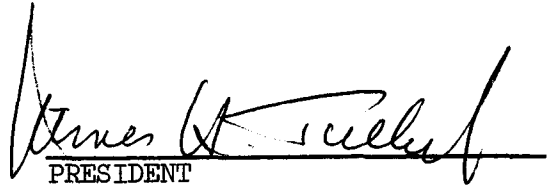
A. That the income received by petitioner Max Yager from his activities as a real estate salesman during the years 1970 and 1971 constituted compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

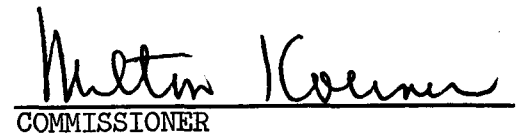
B. That the Notice of Deficiency dated August 26, 1974 should not have been issued against petitioner Marie Yager.

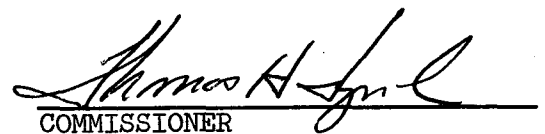
C. That the petition of Max and Marie Yager is granted and the Notice of Deficiency issued August 26, 1974 is hereby cancelled.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER