

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael & Beatrice Brown :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Unincorporated Business Tax :

under Article 23 of the Tax Law

for the Year 1966. :

State of New York

County of Albany

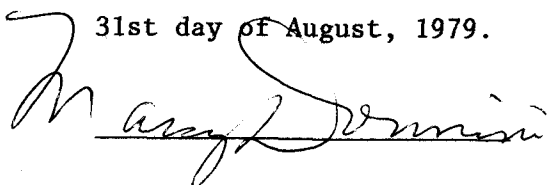
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Michael Brown the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

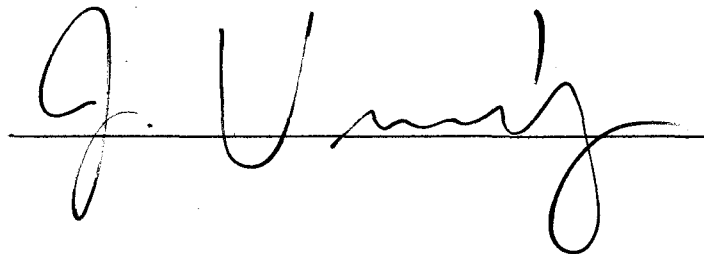
Mr. Michael Brown
Brown & Brown, Esqs.
32 Court St.
Brooklyn, NY 11201

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
31st day of August, 1979.


Mary J. Derrin


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York

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Jay Vredenburg, 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 31st day of August, 1979, he served the within notice of Decision by certified mail upon Michael & Beatrice Brown, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael & Beatrice Brown

165 W. Olive St.

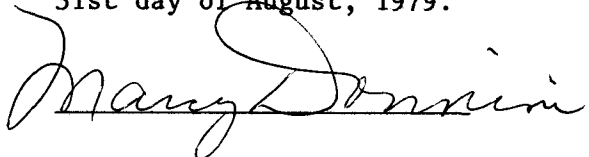
Long Beach, NY 11561

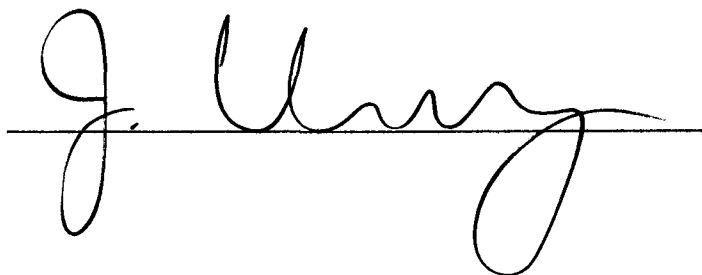
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

Sworn to before me this

31st day of August, 1979.







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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Michael & Beatrice Brown
165 W. Olive St.
Long Beach, NY 11561

Dear Mr. & Mrs. Brown:

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(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,

A handwritten signature in cursive script, likely of John J. Sollecito, the Director.

cc: Petitioner's Representative
Michael Brown
Brown & Brown, Esqs.
32 Court St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL BROWN : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Year 1966. :
:

Petitioner, Michael Brown, 165 West Olive Street, Long Beach, New York 11561, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1966 (File No. 00161).

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 May 17, 1978 at 9:15 A.M. Petitioner appeared by Harry Brown, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Robert Felix, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a sales representative is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Michael Brown, filed a Federal individual income tax return for 1966, whereby he reported net business income from his activities as a sales representative and also paid self-employment taxes. He did not file an unincorporated business tax return for said year.

2. As the result of an audit, the Income Tax Bureau issued a Notice of Deficiency to petitioner on July 31, 1972, asserting both unincorporated business tax on income derived from his activities as a sales representative, and a penalty under section 685(a) of the Tax Law.

3. Petitioner, Michael Brown, contended the following:

- (a) He was retained as a salesman by a sales representative from Panasonic Corporation, known to him as Ed Green.
- (b) He was assigned a territory by Mr. Green.
- (c) He was restricted from selling other products.
- (d) He was required to report his selling activities to Mr. Green, who exercised supervisory control over him.
- (e) Mr. Green was primarily concerned with the results of petitioner's selling activities.
- (f) He was not reimbursed for selling expenses.
- (g) He maintained an office at his personal residence.

Although he was given the opportunity to do so, petitioner did not submit documentary evidence to corroborate these contentions.

CONCLUSIONS OF LAW

A. That as imposed by section 689(e) of the Tax Law, petitioner, Michael Brown, has failed to sustain the burden of proof necessary to show that his activities as a sales representative constituted those of an employee, within the meaning and intent of section 703(b) of the Tax Law.

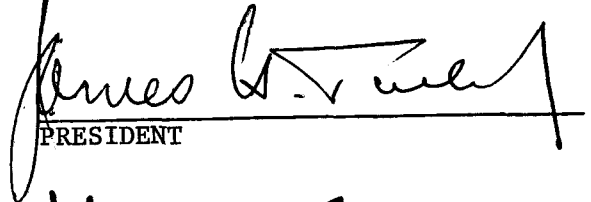
B. That petitioner's activities as a sales representative constituted those of an independent contractor; thus, the income derived therefrom is subject to unincorporated business tax pursuant to section 701 of the Tax Law.

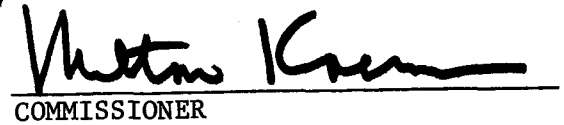
C. That the petition of Michael Brown is denied and the Notice of Deficiency issued July 31, 1972 for \$492.31 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO Mr. Coburn

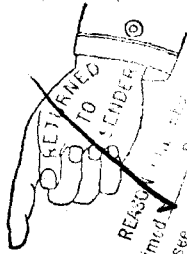
Returned, no better address.
Please file.

10/1/79

Joseph Chyrywaty

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Unclaimed
Addressee in known
Insufficient Address
No such street
Do not file

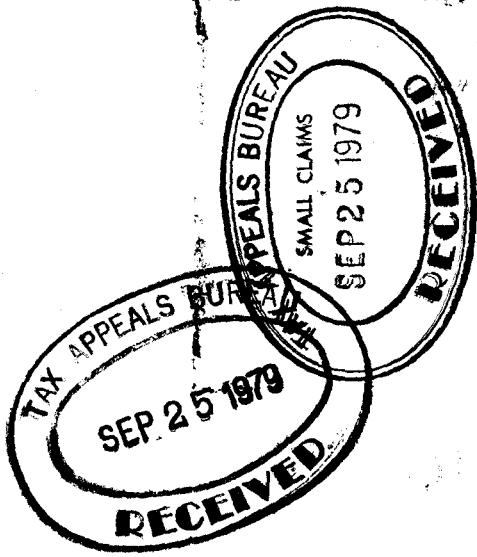
CERTIFIED

No. 297886

MAIL

9/19

Michael & Beatrice Brown
165 W. Olive St.
Long Beach, NY 11561



REQUEST FOR BETTER ADDRESS

Requested by <i>Lynn Luce</i>	Unit <i>TAB Rm 107 Bldg 9</i>	Date of Request <i>9/25/79</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>089-16-2850</i> <i>090-12-3209</i>	Date of Petition <i>rec'd 1/27/75</i>
Name <i>BROWN, MICHAEL + BEATRICE</i>	
Address <i>165 WEST OLIVE ST. LONG BEACH, N.Y. 11561</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input checked="" type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by <i>M. Cowan</i>	Section <i>MI</i>	Date of Search <i>9-27-79</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

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Sincerely,



cc: Petitioner's Representative
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Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

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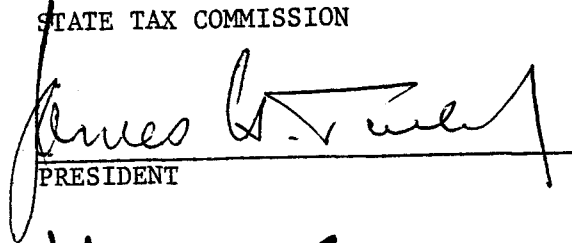
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DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


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COMMISSIONER