

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FAY FANTA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) :
1967 through 1973.

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 April , 1979 , He served the within
Notice of Decision by (certified) mail upon Fay Fanta
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Ms. Fay Fanta
30 West 60th Street
New York, NY 10023

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 the)~~ petitioner.

Sworn to before me this

6th day of April , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~XXXXXXX~~ :
1967 through 1973.

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 April , 1979 , he served the within
Notice of Decision by (certified) mail upon Jason Marcus
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Jason Marcus
21 East 40 St.
New York, NY 10016

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

6th day of April , 1979.

Marilyn J. Papineau

John Huhn



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

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

April 6, 1979

Ms. Fay Fanta
30 West 60th Street
New York, NY 10023

Dear Ms. Fanta:

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 **four 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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
FAY FANTA	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967 through 1973.	:	

Petitioner, Fay Fanta, 30 West 60th Street, New York, New York 10023, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967 through 1973 (File Nos. 13922 and 13923).

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 19, 1978 at 9:15 A.M. Petitioner appeared by Jason Marcus, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a sales representative during the years 1967 through 1973 constituted the carrying on of an unincorporated business or the performance of services as an employee.

II. Whether the Income Tax Bureau properly imposed penalties pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law for the years 1967 through 1971.

FINDINGS OF FACT

1. Petitioner, Fay Fanta, timely filed New York State personal income tax returns for the years 1967 through 1973. She did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities as a sales representative constituted the carrying on of an unincorporated business. Accordingly, it issued two notices of deficiency, one on January 27, 1975 and one on July 28, 1975 for the years 1967 through 1973, in the amount of \$3,219.84 in unincorporated business tax, plus \$958.60 in penalty and \$767.88 in interest, for a sum of \$4,946.32.

3. Petitioner performed services as a sales representative for Marsel Mirror and Glass Products, Inc. (hereinafter "Marsel") during the years at issue. She was compensated on a commission basis.

4. Petitioner contended that Marsel's name was on the door of her showroom, that her telephone was listed in Marsel's name and that she used Marsel's letterhead and billheads. She was assigned a territory and permitted to sell only to certain classes of customers within said territory. She reported daily to the president of Marsel by telephone or mail. She was expected to be in the showroom when not traveling and the amount of commissions which she earned was determined separately by Marsel for each sale. Petitioner further contended that she was reimbursed by Marsel for a portion of the showroom expenses which she incurred.

5. Petitioner did not show (except as to territory) that there was any control over her day-to-day activities. She did not submit any documentary evidence or testimony as to the amount of reimbursement from Marsel for showroom expenses which she incurred.

6. Petitioner represented at least three principals in the year 1971. She had her own letterhead. Income taxes and social security were not withheld from her compensation by Marsel and she was not covered by disability or unemployment insurance, nor did she receive any employee fringe benefits. She filed Federal Schedule "C" to claim business deductions such as rent, telephone, office cleaning, other office expenses, commissions paid, travel expenses, gifts and goodwill items, entertainment and other business expenses. Petitioner's business expenses amounted to approximately 39% of gross commissions earned by her.

7. Petitioner did not submit documentary or any satisfactory evidence to show that her failure to file unincorporated business tax returns for the years at issue was due to reasonable cause and not due to willful neglect.

CONCLUSIONS OF LAW

A. That petitioner's activities as a sales representative constituted the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703(a) of the Tax Law; thus, the income derived therefrom was subject to the imposition of unincorporated business tax, within the meaning and intent of section 701(a) of the Tax Law.

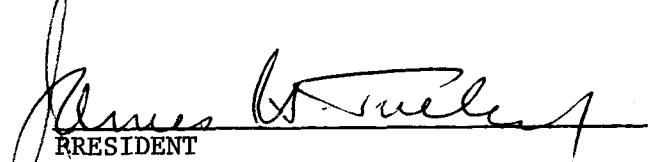
B. That the degree of direction and control exercised over petitioner's activities does not indicate the existence of an employer/employee relationship, within the meaning and intent of section 703(b) of the Tax Law.


C. That the Income Tax Bureau properly asserted penalties pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law for the years 1967 through 1971.

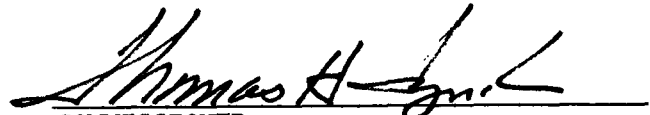
D. That the petitions of Fay Fanta are denied and the notices of deficiency issued January 27, 1975 and July 28, 1975 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


RESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

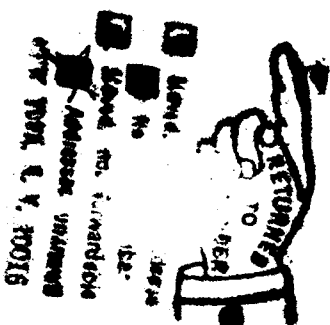
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Jason Marcus
21 East 40 St.
New York, NY 10016

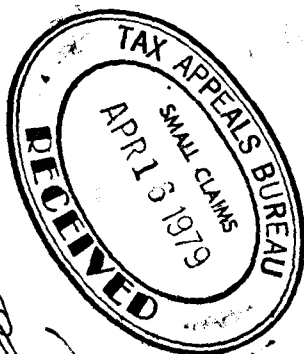
CERTIFIED

No.

181291

MAIL

UNKNOWN



*no letter
address
Oct 14/79 - from
Bureau
4/17/79 attorney*



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

JAMES H. TULLY JR., PRESIDENT
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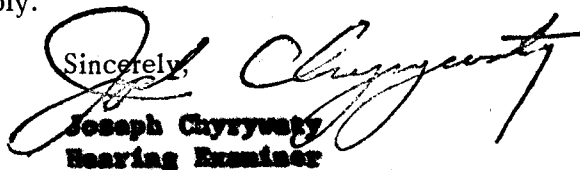
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