

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Robert Krosner

:  
:  
: 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 Years 1974 & 1975.

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 9th day of July, 1982, he served the within notice of Decision by certified mail upon Robert Krosner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Krosner  
75 Bayberry Ave.  
Garden City, NY 11530

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  
9th day of July, 1982.

*Constance A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

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of

Robert Krosner

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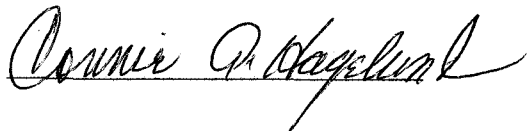
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of July, 1982, he served the within notice of Decision by certified mail upon Alvin Wayne the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

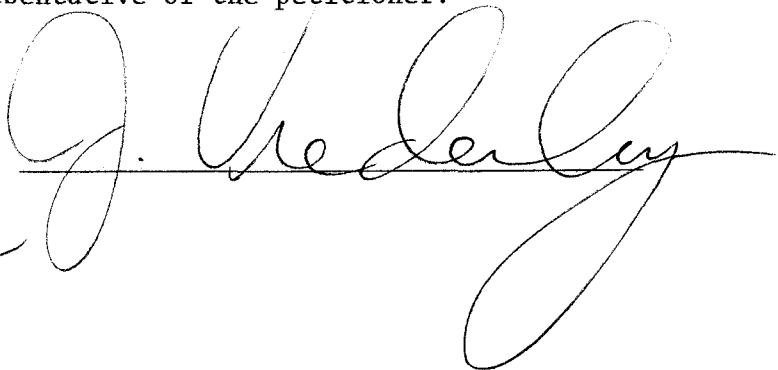
Alvin Wayne  
Bloom, Epstein, Wayne, Reiss & Milner  
110 E. 42nd St.  
New York, NY 10017

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  
9th day of July, 1982.





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

July 9, 1982

Robert Krosner  
75 Bayberry Ave.  
Garden City, NY 11530

Dear Mr. Krosner:

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:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Alvin Wayne  
Bloom, Epstein, Wayne, Reiss & Milner  
110 E. 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ROBERT KROSNER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1974	:	
and 1975.	:	

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Petitioner, Robert Krosner, 75 Bayberry Avenue, Garden City, New York 11530 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 1974 and 1975 (File No. 26726).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 18, 1981 at 10:45 A.M. Petitioner appeared with Alvin Wayne, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

Whether petitioner's activities as a furniture salesman constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Robert Krosner, timely filed New York State combined income tax returns with his wife for years 1974 and 1975 whereon he reported "wage" income derived from his activities as a salesman. He did not file an unincorporated business tax return for either year at issue.

2. On March 14, 1978 the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that the income derived from his activities as a salesman is subject to the unincorporated business tax. Accordingly, a Notice of Deficiency was issued against petitioner on January 15, 1979 asserting unincorporated business tax of \$3,778.37, penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law of \$1,404.50, for failure to file unincorporated business tax returns and failure to pay the tax determined to be due, respectively, plus interest of \$1,260.99, for a total due of \$6,443.86.

3. During the years at issue petitioner was a salesman for three affiliated furniture manufacturers, namely, Essex Chair Company (Mellin Quincy), the Bennington Company and Vermont Furniture Company. All three companies were located at the same address in Union, New Jersey. Additionally, all were owned by the same principals and operated under the same management. The products of said companies were non-competitive.

4. Petitioner was compensated on a commission basis. He was not reimbursed for ordinary and necessary business expenses incurred.

5. Petitioner's assigned territory consisted of Manhattan, Bronx, Brooklyn, Queens and the counties of Westchester, Nassau and Suffolk.

6. Petitioner was prohibited from carrying other lines of merchandise and was required to sell only to those customers who carried a complete line of products manufactured by his principals.

7. Petitioner did not maintain an office or separate business telephone listing.

8. Petitioner was required to report by telephone to the Union, New Jersey office on a daily basis.

9. Petitioner was required to attend periodic sales meetings and markets, follow up on customer complaints, and follow up on collections. At said meetings petitioner was instructed how to present and display the product lines and was given answers to possible customer questions about competitor lines.

10. One order form, which listed all three affiliated principals, was used by petitioner in writing all orders. Business cards and stationery used by petitioner showed the principals address and phone number exclusively.

11. Petitioner was routinely furnished leads by his principals. Any new accounts developed required company approval.

12. Petitioner's principals withheld Federal withholding tax and F.I.C.A. from his compensation. Additionally, such principals covered him for unemployment and health insurance.

13. Petitioner had no employees of his own.

#### CONCLUSIONS OF LAW

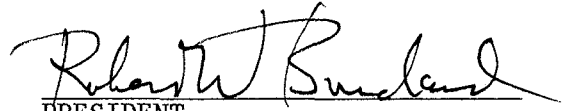
A. That the degree of direction and control exercised by petitioner's principals over his activities was sufficient for the existence of a bona fide employer-employee relationship. Accordingly, the income derived from his sales activities constituted income derived from services rendered as an employee, and as such, said income is exempt from the imposition of unincorporated business tax within the meaning and intent of Section 703(b) of the Tax Law.


B. that the petition of Robert Krosner is granted and the Notice of Deficiency dated January 15, 1979 is cancelled.

DATED: Albany, New York

JUL 09 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER