

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLEN HERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~xxx Period(s)~~ :  
1971 and 1972.

State of New York  
County of Albany

Bruce Batchelor , 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 21st day of December , 1976 , he served the within  
Notice of Decision by (certified) mail upon Allen Herman  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Allen Herman  
25 Central Park West  
New York, New York 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 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

21st day of December , 1976.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLEN HERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income and :  
Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~xx-xxxxxx~~ :  
1971 and 1972.

State of New York  
County of Albany

Bruce Batchelor , 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 21st day of December , 19 76, she served the within  
Notice of Decision by (certified) mail upon Ted R. Elkort  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Ted R. Elkort  
35 West 53rd Street  
New York, New York 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 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

21st day of December , 19 76

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 21, 1976

TELEPHONE: (518) **457-3850**

Mr. Allen Herman  
25 Central Park West  
New York, New York 10023

Dear Mr. Herman:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690 & 722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

*Frank J. Puccia*  
**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ALLEN HERMAN : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income and Unincorporated :  
Business Taxes under Articles 22 and 23 of :  
the Tax Law for the Years 1971 and 1972. :  
:

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Petitioner, Allen Herman, residing at 25 Central Park West, New York, New York, has filed a petition for redetermination of a deficiency or for refund of personal and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1971 and 1972. (File No. 2-14196420).

A small claims hearing was held August 17, 1976, at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Small Claims Hearing Officer. Petitioner, Allen Herman, appeared by Ted R. Elkort, Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

The only issue is whether or not petitioner, Allen Herman's income from activities as a representative is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Allen Herman, filed timely 1971 and 1972 personal income tax returns in which he indicated his occupation as "theatrical management" and, except for interest income, he reported all his income as business income. Petitioner, Allen Herman, did not file unincorporated business tax returns. The Income Tax Bureau held that petitioner, Allen Herman, was self-employed and that his income was subject to unincorporated business tax. A Notice of Deficiency dated July 28, 1975 was issued for personal income and unincorporated business taxes due. The personal income tax increase in the amount of \$192.10 resulted from a Federal adjustment which petitioner, Allen Herman, is not contesting. The total additional tax due shown on the Notice of Deficiency is \$1,436.11, penalty \$495.59, and interest \$263.47 for a total of \$2,195.17.

2. Petitioner, Allen Herman, represented several clients in the radio and television commercials field. He operated under written contracts with each client. Petitioner, Allen Herman, handled the negotiation and detail work leading to the signing of contracts to perform by the clients. The results to be obtained had to be acceptable to the clients.

3. Petitioner, Allen Herman's clients did not issue withholding tax statement forms to him or make any deductions from his compensation. Petitioner's clients paid him on a fee basis. In addition to services performed for clients, petitioner, Allen Herman, performed business connected services for employers who did issue

withholding tax statements to him. Petitioner, Allen Herman, received withholding tax statements from two employers in 1971 showing compensation totaling \$474.62. For 1972, one employer issued a withholding tax statement indicating \$176.00 as wages paid to petitioner. Petitioner, Allen Herman's gross business income including such income from employers was \$32,019.00 in 1971 and \$26,474.00 in 1972.

4. Petitioner, Allen Herman, did not report any expense reimbursement from principals on his Federal or state returns. He filed Federal Schedule C in which he deducted expenses for rent, depreciation, secretarial work, cleaning and maintenance, postage, gifts, insurance, travel and entertainment. Petitioner, Allen Herman, financed his own retirement plan. He was not provided office space by any of his employers and had his own letterheads. There was no indication of any restrictions by employers on the number of clients petitioner, Allen Herman, could represent or any division of petitioner's time between employers.

#### CONCLUSIONS OF LAW

A. That the fees received for services as a representative by petitioner, Allen Herman, from clients he represented and from wages from other employers earned in 1971 and 1972 does not constitute income received 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.

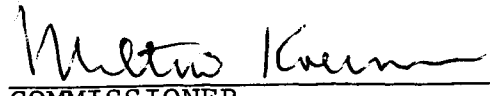
B. That the activities of petitioner, Allen Herman, during the years 1971 and 1972 constituted the carrying on of an unincorporated business and that his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.

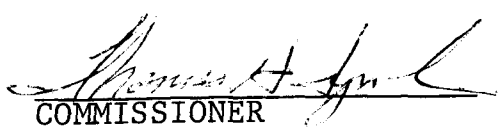
C. That the petition of Allen Herman is denied and the Notice of Deficiency dated July 28, 1975, is sustained.

DATED: Albany, New York  
December 21, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER