

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL BURGER

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) ~~xxx~~ 1963 through 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 29th day of September , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Paul Burger
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Paul Burger
6700 192nd Street
Flushing, New York

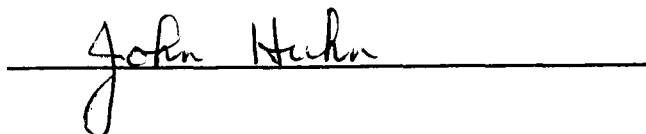
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :
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1963 through 1971.

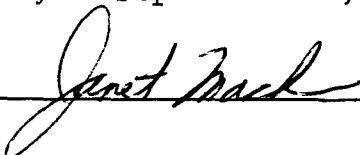
State of New York
County of Albany

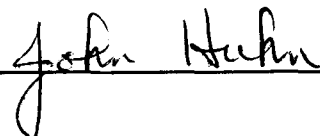
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Nathan Altman
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Nathan Altman, CPA
Altman, Eisenberg & Company
570 Seventh Avenue
New York, New York 10018
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

29th day of September, 1977.







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

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

September 29, 1977

**Mr. Paul Burger
6700 192nd Street
Flushing, New York**

Dear Mr. Burger:

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) **690 & 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,

**John J. Sollecito
Director
Tax Appeals Bureau**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
PAUL BURGER	:	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 1963 through 1971.	:	

Petitioner, Paul Burger, 192 04 71st Crescent, Fresh Meadows, New York 11365, filed petitions 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 1963 through 1971. (File Nos. 13099, 13100 and 13101). A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 24, 1977 at 1:15 P.M. The petitioner appeared by Nathan Altman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner, Paul Burger's selling activities during the years 1963 through 1971 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Paul Burger, filed New York State income tax resident returns for the years 1963 through 1971. He did not file New York State unincorporated business tax returns for said years.

2. The Income Tax Bureau issued statements of audit changes against petitioner, Paul Burger, imposing unincorporated business tax upon the income received by him from his activities as a handbag salesman during the years in issue. It also imposed additional personal income tax based upon the examination of his income tax return for the year 1970. This additional assessment was not contested by petitioner. In accordance with the aforesaid statements of audit changes, the Income Tax Bureau issued notices of deficiency in the sums of \$14,583.33, and \$3,800.95.

3. Petitioner, Paul Burger, was a handbag salesman during the years 1963 through 1971. He represented two firms in the sale of handbags. One line was leather handbags while the other was a cheaper line made of vinyl. The products sold by him for each firm were non-competitive. He did not have an office or employees.

4. The firms for whom petitioner, Paul Burger, sold handbags did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him during the years 1963 through 1971. They did not cover him for unemployment insurance. He was not reimbursed for any of his business expenses, including customer cooperative advertising. He deducted these business expenses on Schedule "C" of his Federal income tax returns. He did not have a written employment contract. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities or techniques, or over the time he devoted to sales except to limit the territory in which he could sell. Petitioner had no retirement plan with either company.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Paul Burger, from the firms that he represented during the years 1963 through 1971 constituted income from his regular business of selling handbags and not compensation as an employee exempt from the imposition of the unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Paul Burger, during the years in issue constituted the carrying on of an unincorporated business and that his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law. (Matter of Paul Burger, S.T.C. March 30, 1972).

C. That the petition of Paul Burger is denied and the notices of deficiency issued against him are sustained.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER