

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN JUNKERE

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) ~~1971~~ 1971.:  
~~1971~~

AFFIDAVIT OF MAILING

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 26th day of April , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon John Junkere  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. John Junkere  
238 East 26th Street, Apt. 2C  
Brooklyn, New York 11226

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

26th day of April , 1977.

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

**April 26, 1977**

TELEPHONE: (518) **457-1723**

Mr. John Junkere  
238 East 26th Street, Apt. 2C  
Brooklyn, New York 11226

**Dear Mr. Junkere:**

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

Please take further notice that pursuant to  
Section(s) **690 and 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**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

## STATE TAX COMMISSION

of :

JOHN JUNKERE :

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 Year 1971. :

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 13, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

Whether the petitioner's business activities during tax year 1971, constituted the carrying on of an unincorporated business, subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, John Junkere, timely filed a New York State income tax return for the year 1971. He did not file a New York State unincorporated business tax return for said year.

2. On May 19, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John Junkere, imposing unincorporated business tax upon the income received by him from his activities as a self-employed person during the year 1971. It also made other adjustments to conform with a 1971 Federal audit, which are not being contested by the petitioner. Pursuant to section 685(b) of the Tax Law, it also imposed a penalty in the sum of \$19.16. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$473.41.

3. During the year 1971, petitioner, John Junkere, was a male attendant hired by ill and disabled individuals to attend to their needs. The petitioner, John Junkere, was hired by these individuals through agencies or referrals.

4. The petitioner, John Junkere, is usually hired on a per diem basis at a fixed daily rate. While in their employ, the aforesaid individuals controlled and directed his activities. He is required to work specified hours at their homes.

5. Petitioner, John Junkere, worked for only one individual at a time. He was not covered by an employee related plan nor was there any withholding or social security tax withheld by these employers.

CONCLUSIONS OF LAW

A. That the degree of control and direction imposed upon the petitioner, John Junkere, by each individual employer resulted in an employee-employer relationship within the meaning and intent of section 703(b) of the Tax Law.


B. That the petitioner's activities as a male attendant did not constitute the carrying on of an unincorporated business under section 703 of the Tax Law.

C. That the petition of John Junkere is granted to the extent of cancelling the unincorporated business tax assessment in the amount of \$218.68 and the penalty under section 685(b) of the Tax Law attributable thereto of \$10.93 for the year 1971, and that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency dated May 19, 1975; and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER