

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD N. COHEN

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the (Year(s) 1965, 1966 :  
and 1967

State of New York  
County of Albany

Lynn Wilson , 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 11th day of July , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon RICHARD N.  
COHEN

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Richard N. Cohen  
284 Brae Briar Road  
Stamford, Connecticut 06903

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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  
11th day of July , 19 72

Maitha Furrow

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD N. COHEN

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the (Year(s) 1965, 1966 :  
and 1967

State of New York  
County of Albany

Lynn Wilson , 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 11th day of July , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon JOSEPH ROTH, CPA

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Joseph Roth, CPA  
1776 Broadway  
New York, New York 10019

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

11th day of July , 1972

Frank J. Russo

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**July 11, 1972**

**Mr. Richard N. Cohen**  
**284 Brae Briar Road**  
**Stamford, Connecticut 06903**

**Dear Mr. Cohen:**

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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
RICHARD N. COHEN :

for a Redetermination of a Deficiency : DECISION  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Years 1966 and 1967 and for Unin- :  
corporated Business Taxes under :  
Article 23 of the Tax Law for the :  
Years 1965, 1966 and 1967. :

---

Richard N. Cohen filed a petition for the redetermination of deficiencies in personal income and unincorporated business taxes under Article 22 of the Tax Law for the years 1966 and 1967 and for unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967. A hearing was held on June 24, 1971, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City.

Joseph Roth, C.P.A., represented the petitioner. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel), represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

#### ISSUES

The issues in this case, where the petitioner is a nonresident who solicits life insurance for one company and general insurance for other companies, are as follows:

a). Whether the petitioner is engaged in an unincorporated business with respect to his life insurance activities.

b). Whether he is engaged in an unincorporated business with respect to his general insurance activities.

c). Whether he is entitled to allocate part of his income to sources outside of New York State.

d). Whether a penalty for failure to file unincorporated business tax returns is proper.

FINDINGS OF FACT

1. Mr. Cohen is a resident of Stamford, Connecticut. He does not work from or have an office at his home. He did not file unincorporated business tax returns for the years in question.

2. Mr. Cohen is a career agent for the Massachusetts Mutual Life Insurance Company under a contract with Robert E. Clancy Associates, General Agent, located at 200 East 42nd Street, New York City. Clancy has a total of about twenty soliciting agents of which about 18 work directly from Clancy's offices. Mr. Cohen does not work from Clancy's office. The Clancy Agency withholds social security from Mr. Cohen's compensation but does not withhold taxes.

3. Mr. Cohen's contract stated, in part, as follows: "Nothing in the contract shall be construed as creating the relationship of employer and employee... The agent shall determine the time, place, and manner of soliciting....applications and the persons solicited. The contract may be terminated at will." This contract (Career Contract III) further provided for compensation as follows: there is a first year commission on new business, four vested renewal commissions of 10% and five nonvested renewals of 3%. In the eleventh and subsequent years, a nonvested "persistency fee" is

paid, which continues after the agent retires, as a "retirement persistency fee". These are payable so long as the contract remains in force. When the contract is terminated only the vested commissions for the first five years are payable. The contract terminates when the agent fails for two years to meet a volume requirement of \$200,000.00 of new business a year, or if the agent is 55 years of age or has 20 years of service, \$100,000.00 a year. The agent is eligible for a contributory pension plan. He is also eligible to place his deferred commissions in a deferred compensation investment program.

4. Mr. Cohen sells general insurance for John M. Riehle & Company which has offices in New York City and New Canaan, Connecticut. Mr. Cohen concedes that he is not an employee of Riehle. Mr. Cohen did not work out of the Connecticut office of Riehle.

5. Mr. Cohen is listed in the phone book at the address of the Riehle Agency in New York City. He pays the Riehle Agency for office space, secretarial services, the servicing and the billing of accounts and the handling of claims on the general insurance he writes. He returns to them 50% to 55% of his commissions for this. He is reimbursed in part by the Clancy Agency for office space at the rate of \$1.50 for each \$1,000.00 of insurance written and for secretarial services at the rate of \$2.00 for each \$1,000.00 of insurance written. This covered about 30% of the expenses he incurred in soliciting life insurance.

his net expenses, not reimbursed, did not exceed 12% of his commissions.

6. Mr. Cohen solicited and sold insurance at places outside of New York, including Tennessee, Grand Bahama Islands and Connecticut. Mr. Cohen allocated to New York only the part of his total commissions which came from policies negotiated in New York.

7. There is no evidence in the record to show what part of Mr. Cohen's commissions are from life insurance and what part are from general insurance.

8. The deficiencies in issue are dated September 28, 1970, and amount to: \$617.34 and \$1,182.51 personal income taxes for 1966 and 1967 respectively, and \$974.89, \$745.70 and \$1,011.03 unincorporated business taxes for 1965, 1966 and 1967 respectively together with a penalty for failure to file an unincorporated business tax return of \$682.90 and interest of \$850.77 for a total of \$6,065.14.

9. The failure to file an unincorporated business tax return was unintentional.

#### CONCLUSIONS OF LAW

A. The petitioner is engaged in his own business with respect to the solicitation of general insurance and is, therefore, subject to unincorporated business tax on the commissions from that business.

B. The petitioner has not carried the burden of proof that he is not engaged in business with respect to the solicitation of life insurance (See Ruling of State Tax Commission, June 9, 1959;

20 NYCRR 281.3) and is, therefore, subject to unincorporated business tax on the commissions from that business.

C. The petitioner has not shown that he has a regular place of business outside of New York within the meaning of section 707(a) of Article 23 of the Tax Law or that he occupies an office or other place where his affairs are systematically carried on outside of New York within the meaning of Regulation 20 NYCRR 131.4(a) and 131.12 under section 632(c) of Article 22 of the Tax Law. Not having such place or business or office outside the State, he must allocate all of his business income to New York.

D. Even though the failure to file an unincorporated business tax return may have been unintentional there is no evidence that there was reasonable cause for such failure to file. The penalty, imposed under sections 685(a) and 722 of the Tax Law is, therefore, proper.

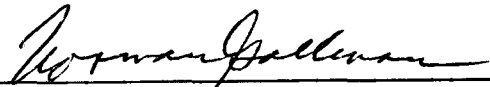
DECISION

The petition is denied and the deficiencies are found to be correct and are due together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

*July 11, 1972*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER