

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HARRY C. COPELAND, JR. AND MARGERY: S.
COPELAND, his wife

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated
Taxes under Article(s) 22 & 23 of the Business
Tax Law for the (Year(s) 1964

State of New York
County of Albany

Martha Funaro , 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 24th day of February , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Harry C. Copeland, Jr.
and Margery S. Copeland (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harry C. Copeland, Jr. and
Margery S. Copeland
1717 Pennsylvania Avenue, N.W.
Washington, D.C.

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

24th day of February , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HARRY C. COPELAND, JR. AND MARGERY; S.
COPELAND, his wife

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Tax Law for the (Year(s) 1964

State of New York
County of Albany

Martha Funaro , 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 24th day of February , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Donald R. Osborn
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Donald R. Osborn
c/o Sullivan & Cromwell
48 Wall Street
New York, 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 Post Office Department within the State of New York.

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known address of the (representative of the) petitioner.

Sworn to before me this

24th day of February , 1972.

Cal Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HARRY C. COPELAND, JR.

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1960, 1961, 1962 & 1963

State of New York
County of Albany

Martha Funaro, being duly sworn, deposes and says that
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Jr.
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
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1717 Pennsylvania Avenue
Washington, D.C.

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Sworn to before me this

24th day of February, 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HARRY C. COPELAND, JR.

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business ;
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1960, 1961, 1962
& 1963

State of New York
County of Albany

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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

24th day of February , 1972.

Karl Zimmerman

Martha Funaro



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

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 24, 1972

**Harry C. Copeland, Jr. and
Margery S. Copeland
1717 Pennsylvania Avenue, N.W.
Washington, D.C.**

Dear Mr. & Mrs. Copeland:

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

Please take further notice that pursuant to **sections 690 & 722**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HARRY C. COPELAND, JR., AND	:	
MARGERY S. COPELAND, his wife	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 and Unincorporated	:	
Business Taxes under Article 23 of the	:	
Tax Law for the year 1964.	:	

In the Matter of the Petition	:	
of	:	
HARRY C. COPELAND, JR.	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the years 1960, 1961, 1962 and 1963.	:	

The taxpayers petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1964. In addition, the taxpayer, Harry C. Copeland, Jr., petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961, 1962 and 1963. A formal hearing was held in the offices of the State Tax Commission, in the City of New York on May 3, 1967. The petitioners appeared through Sullivan & Cromwell, Esqs. (Donald R. Osborn, Esq., of Counsel).

ISSUES

The issues in this matter are whether: (a) post-terminal commissions on insurance procured by the petitioner, Harry C. Copeland, Jr., are subject to unincorporated business tax, (b) commissions earned on insurance procured by the petitioner Harry C. Copeland, Jr., as an agent for a company, of which he

was president, are subject to unincorporated business tax, and (c) commissions received by the petitioners after ceasing to be residents of New York are subject to personal income tax and unincorporated business tax.

FINDINGS OF FACT

1. The petitioner, Harry C. Copeland, Jr., during the period April 15, 1950, through May 31, 1959, was a general insurance agent under contract with Massachusetts Mutual Life Insurance Company ("Mass Mutual") in the area of Syracuse, New York.

2. From June 1, 1959, through March 15, 1964, Mr. Copeland was president of H. C. Copeland & Company, Inc. (the "Company"), which was a New York Corporation and general agent of Mass Mutual in the New York City area. In addition to being president of the Company, Mr. Copeland was an insurance agent under a career contract with the Company executed on June 1, 1959. On March 31, 1964, petitioner terminated his New York residency, and thereupon resided in Washington, D.C.

3. During the years 1960 through 1964, petitioner continued to receive commissions on insurance written prior to the termination in May, 1959, of the 1950 contract with Mass Mutual. He also received a salary as president of the Company, commissions earned on insurance sold as an agent for the Company, and other fees and commissions.

4. During the period, Mr. Copeland operated the Syracuse Agency, he was subject to and paid New York unincorporated business taxes. Petitioner did not file unincorporated business tax returns for the years 1960 through 1964.

5. Commissions received and renewal commissions earned as an insurance agent with the Company were not subject to withholding

taxes, social security or unemployment insurance. Petitioners filed Schedule "C" with their Federal tax returns for each of the years in question. These schedules listed business deductions ranging in amounts of \$11,437.72 for the year 1964 to \$42,935.92 for the year 1960. These deductions included expenses for items such as salaries, interest on business indebtedness, depreciation, taxes on business property, commissions, legal and professional fees, promotions and entertainment, office expenses, business travel and business dues.

6. The petitioners have failed to prove that the usual characteristics of an employer-employee relationship existed between the Company and Harry C. Copeland, Jr., during their period of association.

7. On May 2, 1966, Notice of Deficiency, (File No. 3-3633615) was issued against the petitioner, Harry C. Copeland, Jr., in the amount of \$8,091.10 plus interest. This deficiency was based upon a determination that commissions received during the years 1960, 1961, 1962 and 1963 were subject to unincorporated business tax.

8. On September 26, 1966, Notice of Deficiency, (File No. 29229313), was issued against the petitioner, Harry C. Copeland, Jr., in the amount of \$1,943.96 plus interest. This deficiency was based upon a determination that commissions received during the year 1964 were subject to unincorporated business tax. In addition, Notice of Deficiency, (File No. 29229313) was issued against the petitioners, Harry C. Copeland, Jr., and Margery Copeland, his wife, in the amount of \$2,412.83 plus interest, holding that commissions received during the period April 1, 1964, to December 31, 1964, were subject to personal income tax.

DECISION

A. Commissions based on insurance written while an agent for Mass Mutual were subject to the unincorporated business tax, payable in the year the commissions were received.

B. Commissions based on insurance written while an agent for the Company were subject to the unincorporated business tax, payable in the year commissions were received.

C. Commissions received by the petitioners during the period April 1, 1964, through December 31, 1964, were earned income derived from New York State sources and are, therefore, subject to New York State personal income tax and unincorporated business tax.

D. The petitions are, therefore, denied and the Notices of Deficiency, (File No.'s 3-3633615 and 29229313) are sustained, together with such interest as may be lawfully assessed.

DATED: Albany, New York

February 24, 1972

STATE TAX COMMISSION

Norman Sullivan

COMMISSIONER

Bruce Menley

COMMISSIONER

Milton Korman

COMMISSIONER

Personal Income

March 7, 1972

Donald R. Cahern, Esq.
Sullivan & Cromwell
48 Wall Street
New York, New York 10005

Re: In the Matter of the Petitions
of Harry G. Copeland, Jr.
Decision dated: February 24, 1972

Dear Sir:

This is to acknowledge receipt of your letter
of March 3, 1972.

The decision of February 24, 1972, represents
an exhaustion of your administrative remedies in
this matter. The rules of the State Tax Commission
do not provide for a rehearing after the issuance
of a decision.

A proceeding in the Supreme Court in the
State of New York to review the decision has to
be commenced within four months of the date of
the decision.

Very truly yours,

Edward Rook
Secretary to the
State Tax Commission

ER/PBC/lw

SULLIVAN & CROMWELL

NEW YORK TELEPHONE: (212) 422-8100
TELEX: 62694
CABLE ADDRESS: LADYCOURT, NEW YORK

17, AVENUE MATIGNON, PARIS 8^e
TELEPHONE: 359-08-00
TELEX: 28970
CABLE ADDRESS: LADYCOURT, PARIS
250 PARK AVENUE
NEW YORK 10017

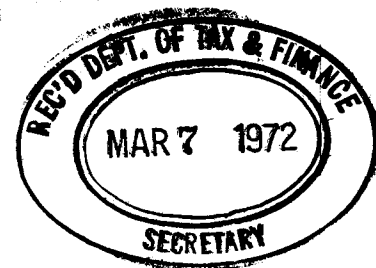
48 Wall Street, New York 10005

March 3, 1972

State Tax Commission,
Department of Taxation and Finance,
State Campus,
Albany, New York 12226

Attention: Edward Rook, Esq.
Secretary to Commission

Re: In the Matter of the Petitions
of Harry C. Copeland, Jr.



Dear Sirs:

I refer to your letter of February 24, 1972 enclosing your decisions in the above matters. The decisions were against the petitioners on all issues.

We strongly urge you to reconsider your decision (Decision A, page 4) that insurance commissions received by petitioner Harry C. Copeland, Jr. in the years 1960 through 1964 in respect of insurance written prior to May 1959 are subject to unincorporated business tax. In May 1959 the business in respect of which these commissions were received was liquidated and ceased to be a "business . . . engaged in or being liquidated" by the petitioner within the meaning of Section 703 of Article 23 of the Tax Law. Your decision correctly describes these commissions as "post-terminal commissions" since they were received after the liquidation of the business conducted by the petitioner prior to May 1959.

The petitioners' case is substantially the same as Leyendecker v. State Tax Commission, 11 App. Div. 2d

747, 201 N.Y.S. 2d 437 (3d Dept.) affirmed without opinion, 9 N.Y. 2d 707, 213 N.Y.S. 2d 454 (1961). In that case the State Tax Commission sought to subject to unincorporated business tax commissions paid by an insurance company in the years 1952 through 1955 to the estate of a partner in a general agency which had been terminated in 1949. Leyendecker held that such commissions were not subject to the unincorporated business tax since no unincorporated business was being engaged in or being liquidated in the years in which the commissions were received.

The fact that after May 1959 petitioner Harry C. Copeland, Jr. was employed as an ordinary insurance agent by a different company has nothing whatsoever to do with commissions that were attributable to the business discontinued in May 1959. That employment represented a wholly new undertaking under a new and different contract in a different part of New York State. It contributed nothing to the generation of the commissions received in respect of the business discontinued in May 1959. Assuming arguendo that this new undertaking was an unincorporated business, the commissions attributable to periods prior to May 1969 were not taxable income of that unincorporated business within the meaning of Section 701 of Article 23 of the Tax Law.

Very truly yours,


Donald R. Osborn