

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH DOLGOFF & SYLVIA DOLGOFF :
:
For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincor-
porated Business Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) 1967 & 1969. :

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

State of New York
County of Albany

Margaret A. Groelz , 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 29th day of April , 1976 , she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Ralph Dolgoff

And Sylvia Dolgoff (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Ralph Dolgoff
449 Clearmeadow Drive
East Meadow, New York 11554

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

29th day of April , 19 76

Janet Mack

Margaret A. Groelz



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
April 29, 1976

Mr. and Mrs. Ralph Dolgoff
449 Clearmeadow Drive
East Meadow, New York 11554

Dear Mr. and Mrs. Dolgoff:

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,


Paul B. Coburn
Supervising Tax
HEARING OFFICER

Enc.

cc: ~~Robert B. Greenberg~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RALPH DOLGOFF and SYLVIA DOLGOFF	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income and Un-	:	
incorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1967 and 1969.	:	
	:	

Petitioners, Ralph Dolgoff and Sylvia Dolgoff, residing at 449 Clearmeadow Drive, East Meadow, New York 11554, have filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1967 and 1969. (File No. 9-34507313.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1975, at 1:10 P.M. Petitioner Ralph Dolgoff appeared pro se and for his wife, Sylvia Dolgoff. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel).

ISSUES

I. Have petitioners, Ralph Dolgoff and Sylvia Dolgoff, already paid an assessment made by the Income Tax Bureau on their 1967 New York State personal income tax return in connection with an unreported Federal audit change for that year?

II. Did petitioner, Ralph Dolgoff's activities as an insurance and mutual fund salesman during the years 1967 and 1969 constitute the carrying on of an unincorporated business?

III. Did the Income Tax Bureau sustain its burden of proof when it sought to amend the Statement of Audit Changes and Notice of Deficiency at the June 17, 1975, formal hearing to include for the year 1969, \$6,599.97 in income received by petitioner, Ralph Dolgoff, from David Marks, Jr., General Agent of the New England Mutual Life Insurance Company, as income subject to the unincorporated business tax?

IV. Did petitioner, Ralph Dolgoff, have reasonable cause for failing to file unincorporated business tax returns for the years 1967 and 1969?

FINDINGS OF FACT

1. Petitioners, Ralph Dolgoff and his wife, Sylvia Dolgoff, filed New York State income tax returns for the years 1967 and 1969.

2. On November 29, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Ralph and Sylvia Dolgoff, making an assessment on their 1967 New York State personal income tax return in connection with an unreported Federal audit change for that same year. The assessment was for \$97.86 plus interest, the total amount due being \$119.12. At the formal hearing it developed that petitioners had already paid this amount in December, 1971.

3. Petitioner, Ralph Dolgoff, did not file New York State unincorporated business tax returns for the years 1967 and 1969.

4. On November 29, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Ralph Dolgoff, imposing unincorporated business tax upon the income received by him for his activities as an insurance and mutual fund salesman during the years 1967 and 1969. It also imposed penalties of \$316.21 for failure to file unincorporated business tax returns for 1967 and 1969. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,584.33.

5. During the years 1967 and 1969, petitioner, Ralph Dolgoff, was an insurance and mutual funds salesman on behalf of different companies. Sales of insurance and mutual funds were made to the same customers at the same time. In 1969, petitioner also served as consultant to Air Cargo Specialists, Inc., on a non-insurance matter.

6. During the years 1967 and 1969, the companies for whom petitioner, Ralph Dolgoff, sold insurance and mutual funds did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him, except as discussed in paragraph 8 below. Petitioner deducted business expenses on Schedule "C" of his Federal tax return. He reported social security as a self-employed person. He maintained an office at home, for which he deducted rent on business property, where he did evening and weekend work, and where he sometimes received prospective customers. The companies for whom he sold insurance and mutual funds did not exercise supervision or control over his sales activities, only asking petitioner to attend occasional seminars and classes. Petitioner was free to determine for himself the time, place and manner for soliciting business. Petitioner did participate in the Agent's Retirement Plan of New England Mutual Life Insurance Company and the Agent's Pension Plan of Madison Life Insurance Company, two of the companies for whom petitioner sold insurance and mutual funds. Under the New England Mutual Life Insurance Company retirement plan, the company, on the basis of an agent's commissions, contributes to a retirement account for the agent. The agent makes no personal contribution to the plan.

7. In 1969, petitioner, Ralph Dolgoff, worked as an insurance agent for David Marks, Jr., General Agent of the New England Mutual Life Insurance Company (herein, "Marks Agency"). The Marks Agency provided petitioner with the following: an office and telephone at its office at 666 Fifth Avenue, New York, New York; access to a secretarial pool for typing and message-taking; stationery with petitioner's name on it, and business cards. The Marks Agency also provided petitioner with leads for new business, in addition to those developed by petitioner on his own. Mr. Marks was available to petitioner for advice. Section 5(B) of the Agent's Contract entered into on October 1, 1968, between the Marks Agency and petitioner provides, in part: "Nothing contained in this Contract shall be construed to create the relationship of employer and employee."

8. In addition to commissions received by petitioner, Ralph Dolgoff, in 1969 from the Marks Agency, petitioner received \$6,599.97 which he reported on his tax return as wages. The Income Tax Bureau at the June 17, 1975, formal hearing sought to amend the Statement of Audit Changes and Notice of Deficiency to include this amount as income subject to the unincorporated business tax. Petitioner received these payments for making himself available to agents of New England Life to discuss techniques developed by petitioner for

corporate selling of life insurance. The payments were made to petitioner by the Marks Agency in lieu of an earlier arrangement whereby petitioner was to have shared in commissions from sales made by other insurance agents pursuant to his corporate sales technique. The new arrangement was made because the Marks Agency thought its agents might exploit petitioner's techniques and not share commissions with petitioner. Federal and New York State income taxes and social security tax were withheld by the Marks Agency from the \$6,599.97.

9. Petitioner, Ralph Dolgoff, prepared his own tax returns for the years 1967 and 1969. For seventeen years petitioner practiced as a public accountant.

CONCLUSIONS OF LAW

A. That the commission and consultant income received by petitioner, Ralph Dolgoff, from the companies he represented during the years 1967 and 1969 constituted income from his regular business of selling insurance and mutual funds, or as a consultant on non-insurance matters, and not compensation 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 aforesaid activities of petitioner, Ralph Dolgoff, during the years 1967 and 1969 constituted the carrying on of an unincorporated business and 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.

C. That the payments received for services provided by petitioner, Ralph Dolgoff, to the Marks Agency in connection with his corporate life insurance sales technique were services performed in furtherance of petitioner's business activities, the conduct of which constitute an unincorporated business, and therefore were subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That petitioner, Ralph Dolgoff, having practiced as a public accountant for seventeen years should have known of the requirement to file unincorporated business tax returns for the years 1967 and 1969, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is not waived.

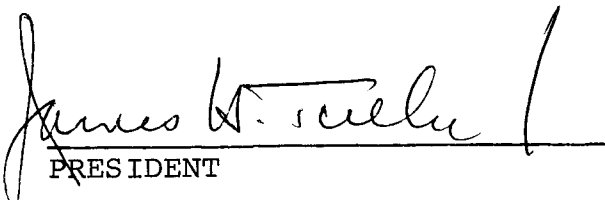
E. That the petition of Ralph Dolgoff and Sylvia Dolgoff is granted to the extent that with regard to petitioners' 1967 New York State personal income tax return, petitioners will be given credit for their payment of \$119.12 made pursuant to the Notice of Deficiency


issued November 29, 1971; and, that, except as so granted, the petition is in all other respects denied.

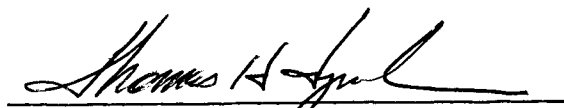
F. That further, that the Income Tax Bureau is hereby directed to modify the Statement of Audit Changes and Notice of Deficiency issued November 29, 1971, relating to petitioner Ralph Dolgoff's failure to file New York State unincorporated business tax returns for the years 1967 and 1969, by adding to income from business for the year 1969 the sum of \$6,599.97, making the total unincorporated business tax due under said Notice of Deficiency the sum of \$1,459.92, together with such interest as may be lawfully owing.

DATED: Albany, New York
April 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER