

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

SEYMOUR BLOCK and HARRIET BLOCK

For a Redetermination of a Deficiency or
~~a Revision of a Determination or a Refund~~
of Personal and Unincorporated Business
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year(s) or ~~Period(s)~~ 1970.

State of New York
County of Albany

John Huhn, 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 September, 1977, she served the within
Notice of Decision by (certified) mail upon Seymour Block and

Harriet Block ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

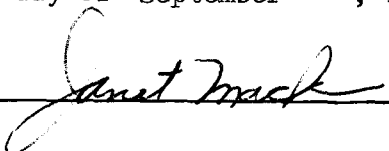
as follows: Mr. and Mrs. Seymour Block
4 Old Field Lane
Lake Success, New York 11030

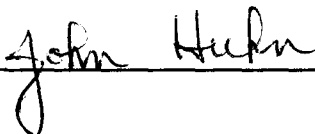
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

In the Matter of the Petition

of

SEYMOUR BLOCK AND HARRIET BLOCK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
~~and for a refund of a deficiency or a refund~~ Refund :
of Personal and Unincorporated Business :
Taxes under Article(s) 22 and 23 of the :
Tax Law for the Year(s) or Period(s) 1970. :

State of New York
County of Albany

John Huhn , 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 September , 1977 , she served the within
Notice of Decision by (certified) mail upon Morris R. Sherman, Esq.

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

as follows: Morris R. Sherman, Esq.
150 Broadway
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 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.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR BLOCK and HARRIET BLOCK

For a Redetermination of a Deficiency or
~~a Revision of a Determination or a~~ Refund
of Personal and Unincorporated Business
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year ~~(s)~~ or Period ~~(s)~~ 1970.

AFFIDAVIT OF MAILING

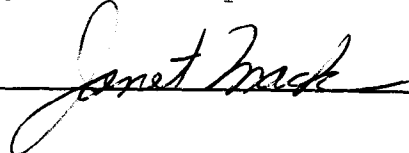
State of New York
County of Albany

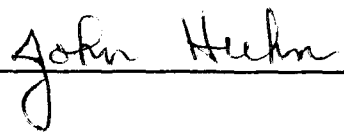
John Huhn, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of September, 1977, she served the within Notice of Decision by (certified) mail upon Howard Schneider, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Howard Schneider, C.P.A.
Goldman & Schneider
18 John 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 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

September 29, 1977

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

Mr. and Mrs. Seymour Block
4 Old Field Lane
Lake Success, New York 11030

Dear Mr. and Mrs. Block:

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 and 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 Petition :
of :
SEYMOUR BLOCK and HARRIET BLOCK : 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 Year 1970. :
:

Petitioners, Seymour Block and Harriet Block, residing at 4 Old Field Lane, Lake Success, New York 11030, filed a petition 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 1970. (File No. 11558)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 12, 1977 at 10:45 A.M. The petitioners appeared by Morris R. Sherman, Esq. and Howard Schneider, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the petitioner, an insurance salesman, was an employee exempt from the unincorporated business income tax on

initial insurance commissions received by petitioner, but paid over to a corporate agency pursuant to an alleged employment contract.

II. Whether disallowances by the Income Tax Bureau of some deductions on petitioner's New York State income tax return were correct.

FINDINGS OF FACT

1. The petitioners, Seymour Block and Harriet Block, filed a joint New York State resident income tax return for the year 1970. They did not file an unincorporated business income tax return for said year.

2. On December 18, 1972, the Income Tax Bureau issued a Statement of Audit Changes revised from one dated July 5, 1972. Attached was a schedule of adjustments by which additional personal income tax of \$5,352.82 was found to be due. Unincorporated business income tax due was computed to be \$3,206.12. With interest of \$641.92, the total due was alleged to be \$9,200.86.

3. A petition for redetermination of the tax deficiency dated July 19, 1972, had been filed by Seymour Block and Harriet Block in response to the Statement of Audit Changes dated July 5, 1972.

4. To the extent that the Income Tax Bureau deemed them to be substantiated by documentary evidence of payment, the items listed below were allowed, and the balance was adjusted as shown on the following Schedule of Audit Adjustments:

<u>Employee Business Expense</u>	
Claimed.....	\$83,451.00
Corrected.....	<u>73,000.00</u>
Adjustment.....	\$10,451.00
Medical Adjustment at 4%.....	418.04
<u>Interest Expense</u>	
Claimed.....	14,082.00
Corrected.....	<u>12,867.30</u>
Adjustment.....	1,214.70
<u>Contributions</u>	
Claimed.....	4,374.00
Corrected.....	<u>3,819.00</u>
Adjustment.....	555.00
<u>Wages, Salaries</u>	
Per Return.....	51,000.00
Corrected.....	<u>-0-</u>
Adjustment.....	(51,000.00)
<u>Commissions received</u> <u>(Assigned to M.B.N.)</u>	
Per Return.....	-0-
Corrected.....	<u>92,008.00</u>
Adjustment.....	<u>92,008.00</u>
Total of Adjustments.....	<u>\$53,646.74</u>

5. The Income Tax Bureau held that all of the income received by petitioner, Seymour Block, from his business activities as an insurance salesman, was subject to the personal income tax under

Article 22 of the Tax Law. It computed a tax deficiency as follows:

Net Adjustment per Schedule.....	\$53,646.74
Taxable Income Previously Stated.....	<u>(4,948.00)</u>
Corrected Taxable Income.....	\$48,698.74
Tax on Corrected Taxable Income.....	\$ 5,377.82
Statutory Credit.....	<u>25.00</u>
Personal Income Tax Payable.....	5,377.82
Tax Previously Computed.....	<u>-0-</u>
Additional Personal Income Tax Due.....	<u>\$ 5,352.82</u>

Unincorporated Business Tax

Commissions assigned to M.B.N. Associates, Inc. in exchange for salary income of \$51,000.00.....	\$92,008.00
Other Commissions per Federal Form 1099 as Reported on Form 1040.....	<u>52,879.00</u>
Total Commission Income Received.....	144,887.00
Business Expenses as Corrected.....	<u>73,000.00</u>
Net Profit from Business.....	71,887.00
Less: Contributions limited to 5% of the Net Profit.....	<u>3,594.00</u>
	68,293.00
Less: Allowance for taxpayer services....	<u>5,000.00</u>
Net Income from Business.....	63,293.00
Less: Exemption.....	<u>5,000.00</u>
Taxable Business Income.....	\$58,293.00
Tax on above at 5 1/2%.....	\$ 3,206.12
Less Business Tax Credit.....	<u>-0-</u>
Total Unincorporated Business Tax Due.....	<u>\$ 3,206.12</u>

6. In April of 1969, Integrated Resources, Inc., a publicly held company whose stock was traded over the counter, acquired control of M.B.N. Associates, Inc., an insurance agency for which

petitioner, Seymour Block, had been a part-time employee for a considerable number of years. In order to secure the full-time services of petitioner, Seymour Block, for its wholly owned subsidiary, M.B.N. Associates, Inc. (hereinafter M.B.N.), Integrated Resources, Inc. (hereinafter Integrated) caused M.B.N. to enter into a five-year employment agreement with petitioner, Seymour Block, in May of 1969. Pursuant to the seven page, twenty article, detailed contract, petitioner, Seymour Block, agreed to devote all of his time and efforts to the business of M.B.N. in selling life insurance and mutual funds. For this he was to receive a fixed compensation of \$52,000.00 per annum for each of the five years of the agreement. In addition and as an added incentive, petitioner, Seymour Block, was given substantial stock options to acquire shares of Integrated. In the event of disability, petitioner, Seymour Block, was to be paid a full salary for six months. He also received liberal sick benefits.

7. Petitioner, Seymour Block, was a career life insurance agent for the Mutual Benefit Life Insurance Company whose general agency was M.B.N. Prior to May 5, 1970, petitioner, Seymour Block, split all first-year premiums with M.B.N. on policies placed through M.B.N. On policies placed through other agencies, petitioner split the first-year premiums with the general agent for

the life insurance company which wrote the policy. Renewal premiums paid by the insured policy holder directly to the insurance company generated a five percent commission to petitioner, Seymour Block, and a two and one-half percent over-ride commission to the insurance company's general agent. After May 5, 1970, petitioner, Seymour Block, received first year premium commissions and turned them over in their entirety to M.B.N. He received and retained all renewal premium commissions, while the over-ride commissions were paid by insurance companies to their originating general agencies.

8. Petitioner, Seymour Block, warranted in the agreement that, except for existing personal renewals on life insurance and mutual funds sold by him prior to May 5, 1969, all commissions received by him or to which he should become entitled during the term of the agreement (with respect to sales of insurance and mutual funds) should belong solely to M.B.N., and that these had to be paid over to M.B.N. The agreement was subsequently amended to provide that renewal commissions paid to petitioner, Seymour Block, were to be retained by him when paid by insurance companies, regardless of when the policy had been written.

9. Petitioner, Seymour Block, maintained an office in New York City with a full-time secretary whom he hired and directed. Petitioner, Seymour Block, also utilized part of his home in Long

Island as an office. M.B.N. did not reimburse petitioner, Seymour Block, for his travel, entertainment, and other business expenses incurred in 1970.

10. M.B.N. withheld Federal, New York State and New York City income taxes, disability insurance, and social security taxes from the salary of \$1,000.00 a week paid to petitioner, Seymour Block, during 1970. A W-2 form was given to him showing the deductions from his 1970 wages of \$51,000.00 paid by M.B.N.

11. Petitioner, Seymour Block, was required to attend meetings, make reports as to his sales, and was generally under the supervision and control of the Board of Directors of M.B.N. As an experienced and well-known high producer in the field of insurance, petitioner was not under close supervision, nor was he given direction as to how to accomplish the end of selling policies aggregating in excess of a million dollars per year. Petitioner, Seymour Block, is a life member of the Million Dollar Round Table, an organization of elite life insurance salesmen.

12. His 1970 Federal income tax return was audited by the Internal Revenue Service and some adjustments were made to the claimed deductions. These adjustments were accepted by the Income Tax Bureau. They had been agreed to by the petitioner, Seymour Block, and the Internal Revenue Service with respect to the 1970 Federal income tax return.

<u>Employee Business Expense</u>	
Claimed.....	\$83,451.00
Corrected.....	<u>73,000.00</u>
Adjustment.....	\$10,451.00
Medical Adjustment.....	418.04
<u>Interest Expense</u>	
Claimed.....	14,082.00
Corrected.....	<u>12,867.30</u>
Adjustment.....	1,214.70
<u>Contributions</u>	
Claimed.....	4,374.00
Corrected.....	<u>3,819.00</u>
Adjustment.....	555.00
Total Adjustment.....	<u>\$12,638.74</u>

13. Petitioner, Seymour Block, had his Federal and state tax returns prepared by a certified public accountant and relied upon said accountant's advice in failing to file an unincorporated business tax return for 1970.

14. Petitioners, Seymour Block and Harriet Block, have not paid the tax assessed in two notices of deficiency dated December 18, 1972.

CONCLUSIONS OF LAW

A. That the petitioner, Seymour Block, was an employee of M.B.N. Associates, Inc. during the year of 1970, and was exempt from the unincorporated business tax on insurance sales commissions earned in 1970 on first-year premiums. In this instance, the relationship of employee and employer was spelled out not only by

the alleged employer's making deductions from the employee's salary of Federal and state withholding taxes, disability taxes and F.I.C.A., but also by a detailed and executed contract of employment. The courts have held that ordinarily the pivotal concern in resolving the issue of whether the taxpayer is an employee or an independent contractor is the amount of direction and control which the alleged employer exercised over the taxpayer. (Gutman v. Tully, 38 N.Y.S. 2d 167) However, the instant case appears to be sui generis and the facts make applicable the following portion of the decision in Matter of Greene v. Gallman, 39 A.D. 2d 270, 272, 333 N.Y.S. 2d 787, aff'd 33 N.Y. 2d 778, 350 N.Y.S. 2d 415:

"Considering the nature of the business of selling life insurance and taking a realistic view of a sales representative's regimen, it is clear that New England (here M.B.N.) exercised all the control and direction which is to be expected under the circumstances to make petitioner an employee within the intendment of the Tax Law."

Wages of an employee are exempt from unincorporated business tax under Article 23, section 703(b) of the Tax Law.

B. That the commissions on first-year premiums for insurance policies sold by petitioner, Seymour Block, were not taxable as income to him since by contract he was under a legal duty to turn over all such commissions to his employer, M.B.N. Associates, Inc.

C. That commissions on renewal premiums for insurance policies written by petitioner prior to his employment contract with M.B.N. and received by petitioner, Seymour Block, in 1970 were receipts derived from his prior insurance policy sales as an independent insurance salesman. Though initially earned by petitioner as an independent salesman, and though their renewal required no further effort by petitioner, Seymour Block, the receipt of these renewal premiums constituted the carrying on of an unincorporated business to the extent of \$52,879.00 reflected on the Forms 1099 for 1970. Unincorporated business tax thereon should be calculated as follows:

Renewal commissions.....	\$52,879.00
Less: Business expense as adjusted	
Salary.....	\$51,000.00
Other commissions.....	<u>52,879.00</u>
Total Business Income.....	\$103,879.00
$\frac{52,879}{103,879} \times 73,000 =$	<u>37,160.00</u>
Net unincorporated business income.....	15,719.00
Less contributions limited to 5% of line above..	<u>785.95</u>
	14,933.05
Less allowance for taxpayer services.....	<u>2,986.61</u>
	11,946.44
Less: Exemption.....	<u>5,000.00</u>
Taxable Business Income.....	6,946.44
Tax @ 5 1/2%.....	382.05
Less: Business Tax Credit.....	<u>-0-</u>
Unincorporated Business Tax Due.....	<u><u>382.05</u></u>

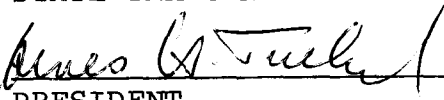
D. That petitioner's failure to file an unincorporated business tax return for 1970 was due to his reliance upon what he believed to be the competent advice of a certified public accountant, that filing such a return was not required. The penalty is waived and interest shall be assessed at the legal, minimum applicable rate until the whole tax is paid.

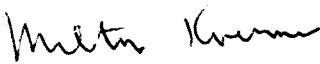
E. That the petition of Seymour Block and Harriet Block is granted to the extent that New York taxable income is increased only to the extent itemized in Item "12" of the Findings of Fact, supra, that unincorporated business tax shall be assessed in the amount of \$382.05 as set forth in Conclusion of Law "C", supra, that the Income Tax Bureau is directed to modify the notices of deficiency dated December 18, 1972 in accordance with this decision; and that except as so modified, said notices are sustained and the petition of Seymour Block and Harriet Block is in all other respects denied.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER