

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS W. and MARY MORLEY

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Bruce Batchelor, 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 14th day of January, 1977, she served the within
Notice of Decision by (certified) mail upon Francis W. and
Mary Morley ~~(xxxxxx)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Francis W. Morley
Eleanor Drive
Mahopac, NY 10541

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

14th day of January, 1977.

Bruce Batchelor

Janet Mudd

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRANCIS W. and MARY MORLEY : 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, Francis W. and Mary Morley, residing at Eleanor Drive, Mahopac, New York 10541, 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. 0-66515481).

A small claims hearing was held August 18, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. Petitioner, Francis W. Morley, appeared pro se, and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq., of counsel).

ISSUES

- I. Was income received by petitioner, Francis W. Morley, from his activities as an insurance agent subject to unincorporated business tax?
- II. Was a claimed casualty loss a proper deduction?

FINDINGS OF FACT

1. Petitioner, Francis W. Morley, filed a 1970 personal income tax return with his wife on Form IT-201. He did not file an unincorporated business tax return for said year. The Income Tax Bureau held petitioner, Francis W. Morley's income from his activities as an insurance agent subject to unincorporated business tax and issued a Notice of Deficiency dated October 27, 1975 in the amount of \$572.69

unincorporated business tax due, plus \$272.03 penalty, plus \$125.82 interest for a total sum of \$970.54.

2. The Income Tax Bureau also made adjustments to petitioners, Francis W. and Mary Morley's 1970 personal income tax return. A portion of employee business expense was disallowed, medical and dental expense was increased, interest expense was increased and a claimed casualty loss was disallowed. The Income Tax Bureau issued a Notice of Deficiency dated October 27, 1975 in the amount of \$147.64 additional personal income tax due, plus \$32.44 interest for a total sum of \$180.08.

3. Petitioners, Francis W. and Mary Morley, agreed to the adjustments made by the Income Tax Bureau to business expense, medical and dental expense and interest expense.

4. Petitioners, Francis W. and Mary Morley, contended that the casualty loss was properly claimed in the amount as shown on their 1970 return. No evidence, except a list of items stolen, was introduced to support their contention.

5. Petitioner, Francis W. Morley, was a full-time life insurance agent for the Guardian Life Insurance Company of America, hereafter referred to as Guardian. His employment contract with Guardian prohibited sales of insurance for any other principal. Guardian provided petitioner, Francis W. Morley, with office space, telephone service and secretarial help held at its place of business and at its own expense.

6. Petitioner, Francis W. Morley, was subject to Guardian's established standards and was covered by Guardian's employee retirement plan. He was required to attend sales meetings once a week. Petitioner, Francis W. Morley, was issued a withholding tax statement from Guardian for 1970. Deductions were made from his compensation for Federal and New York State taxes and for social security.

7. In 1970, petitioner, Francis W. Morley, had no business phone listing or his own letterhead or business cards. He did not receive business telephone calls or clients at his home. He did not employ assistants.

CONCLUSIONS OF LAW

A. That petitioners, Francis W. and Mary Morley, did not sustain the burden of proof required by section 689(e) of the Tax Law as to substantiation of the casualty loss as a proper deduction.

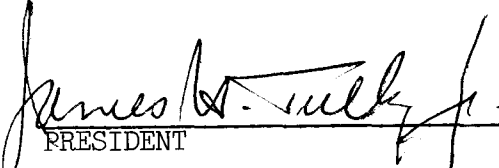
B. That petitioner, Francis W. Morley's activities as an insurance agent for the Guardian Life Insurance Company of America during 1970 were services performed as an employee and his income therefrom was exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the petition of Francis W. Morley with respect to the imposition of unincorporated business tax under Article 23 of the Tax Law is granted and the Notice of Deficiency dated October 27, 1975 in the total sum of \$970.54 is cancelled.

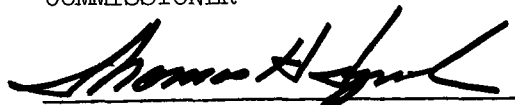
D. That the petition of Francis W. and Mary Morley with respect to the imposition of additional personal income tax under Article 22 of the Tax Law is denied and the Notice of Deficiency dated October 27, 1975 in the sum of \$147.64 plus any interest that is legally owing is sustained.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER