

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD and JOYCE SCHLESINGER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income and
Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~or Period(s)~~
1963, 1964 and 1965.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of January, 1977, he served the within
Notice of Decision by (certified) mail upon Harold & Joyce
Schlesinger (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. & Mrs. Harold Schlesinger
79 Park View Drive
Searington, L.I., 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~~
~~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
10th day of January, 1977.

Bruce Batchelor

Jant Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 10, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Harold Schlesinger
79 Park View Drive
Searington, L.I., New York

Dear Mr. & Mrs. Schlesinger:

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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia

Supervisor of

Small Claims Hearings

Enc.

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD and JOYCE SCHLESINGER

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 Years 1963, 1964 and 1965.

Petitioners, Harold and Joyce Schlesinger, residing at 79 Park View Drive, Searington, Long Island, New York, have 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 years 1963, 1964 and 1965. (File Nos. 12636664 and 32587065). A small claims hearing was held before Joseph Marcus, Hearing Officer, on August 20, 1976, at 2:45 P.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and for his wife, petitioner, Joyce Schlesinger. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Was income received by petitioner, Harold Schlesinger, from his activities as an insurance agent during the years 1963, 1964 and 1965, subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Harold and Joyce Schlesinger, filed New York State income tax returns (Form IT-201) for the years 1963, 1964 and 1965. In addition, thereto, the petitioner, Harold Schlesinger, filed New York State unincorporated business tax returns (Form IT-202) for the same years. Petitioner reported only a portion of his earnings and paid no unincorporated business tax thereon.

2. On April 10, 1967 and January 27, 1969, the Income Tax Bureau issued Statements of Audit Changes for the years 1963, 1964 and 1965 imposing unincorporated business tax upon all the commissions earned by the petitioner as an insurance agent. In accordance therewith, the Income Tax Bureau issued Notices of Deficiency for the years under review.

3. Petitioner was a general agent with the Hartford Life Insurance Company during the years in question. In addition, he received commissions from several other insurance companies in connection with the sale of insurance policies.

4. Petitioner maintained his own office at 295 Madison Avenue, New York City. He was not under any direct supervision or control by any of the companies he represented.

5. Petitioner employed a full-time secretary and sub-agents. No payroll deductions were made from his remuneration from his principals nor was he a member of any company pension plan.

6. At all times the petitioner arranged his own working time and was not compelled to report to any of his principals on a regular basis.

CONCLUSIONS OF LAW

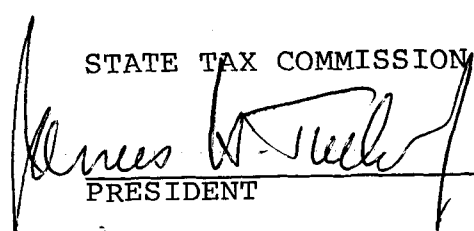
A. That petitioner, Harold Schlesinger, was an independent insurance agent whose activities constituted the carrying on of an unincorporated business, in accordance with section 703 of the Tax Law.

B. That all of petitioner's income during the years 1963, 1964 and 1965 from the aforesaid activities was subject to unincorporated business tax.

C. That the petitions of Harold Schlesinger are denied and that the Notices of Deficiency dated April 10, 1967 and January 27, 1969 are sustained.

DATED: Albany, New York
January 10, 1977


STATE TAX COMMISSION




PRESIDENT

COMMISSIONER

COMMISSIONER



COMMISSIONER



COMMISSIONER