

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sandford R. Johnson :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
and UBT under Article 22 & 23 of the Tax Law for :  
the Years 1967-1972. :

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State of New York  
County of Albany

Jay Vredenburg, 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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Sandford R. Johnson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sandford R. Johnson  
211 East 70th St.  
New York, NY 10021

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
14th day of August, 1981.

*Connie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sandford R. Johnson :  
: AFFIDAVIT OF MAILING  
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of a Determination or a Refund of Personal Income :  
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State of New York  
County of Albany

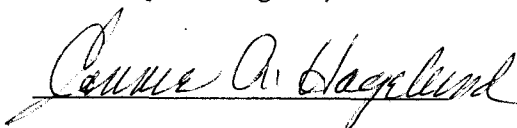
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of August, 1981, he served the within notice of Decision by certified mail upon Vincent Russo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

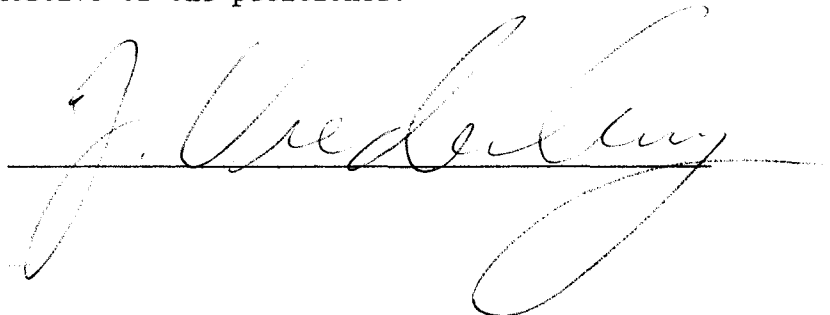
Vincent Russo  
Baker, Nelson & Williams  
444 Madison Ave.  
New York, NY 10022

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 August, 1981.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

August 14, 1981

Sandford R. Johnson  
211 East 70th St.  
New York, NY 10021

Dear Mr. Johnson:

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 & 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Vincent Russo  
Baker, Nelson & Williams  
444 Madison Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SANDFORD R. JOHNSON	:	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 1967, 1968, 1969, 1970,	:	
1971 and 1972.	:	

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Petitioner, Sandford R. Johnson, 242 Toylsome Lane, Southhampton, New York 11968, 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 1967, 1968, 1969, 1970, 1971 and 1972 (File No. 15806).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 31, 1980 at 10:45 A.M. Petitioner, Sanford R. Johnson appeared by Vincent Russo, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether income derived from "other insurance sales" is subject to the unincorporated business tax, and if so, whether a proportionate share of business expenses should be deducted from unincorporated business taxable income.

II. Whether a portion of a refund claimed for the year 1972 was properly applied to a 1964 tax liability.

FINDINGS OF FACT

1. Petitioner, Sandford R. Johnson, and Jeanne M. Johnson, his wife, timely filed New York State income tax resident returns for the years 1967, 1968, 1969, 1970, 1971 and 1972, on which he reported net business income from his activities as an insurance salesman. Petitioner did not file unincorporated business tax returns for the years 1967, 1968, 1969, 1970, 1971 and 1972.

2. The aforementioned net business income reported by petitioner consisted of income earned from the Colonial Life Insurance Company of America (hereinafter "Colonial"), plus income from other insurance sales, less business expenses.

3. On June 28, 1976, the Audit Division issued a Notice of Deficiency for the years 1967, 1968, 1969, 1970, 1971 and 1972 for \$3,854.45, plus interest of \$1,285.15, along with an explanatory Statement of Audit Changes, which indicated that;

(a) the income from other insurance sales was held subject to the unincorporated business tax for the years 1967, 1968, 1969, 1970, 1971 and 1972. The income at issue did not include the income earned from Colonial and did not take into consideration any of the business expenses deducted.

(b) additional personal income tax was imposed for the years 1969 and 1970, of \$727.51 and \$667.03, respectively, for unreported Federal audit adjustments. This item was conceded and is not at issue.

4. Petitioner contended that the income derived from other insurance sales was not subject to the unincorporated business tax since he rendered such services as part of his duties as an employee of Colonial. No oral testimony was rendered and no documentary evidence was submitted regarding this issue.

5. Petitioner argued that if the income derived from other insurance sales was held subject to the unincorporated business tax, a proportionate

share of allowable business expenses are deductible against that income, since a proportionate share of these expenses were incurred in connection with said income. In support of his contentions, petitioner submitted an analysis of income and business expenses for the years at issue, which revealed the following:

Business Expenses Attributable  
to Other Insurance Sales

1967	\$4,782.00
1968	4,879.00
1969	5,627.00
1970	6,244.00
1971	4,334.00
1972	4,836.00

6. The New York State Income Tax Resident Return timely filed for the year 1972 requested a refund of an overpayment of \$5,204.54. Although the requested refund was granted, the Income Tax Bureau reduced it by \$741.12 and applied this amount to an outstanding tax liability due for the year 1964. Petitioner argued that the 1964 tax liability was previously paid and requested that the bureau file for the year 1964 be entered into evidence and examined. Examination of the 1964 bureau file for petitioner Sanford R. Johnson and Jeanne M. Johnson, his wife, revealed in part, the following:

(a) On February 18, 1969, the Income Tax Bureau received a notice of change of taxable income (form IT-115) from petitioner reporting a federal audit adjustment for the year 1964 in the sum of \$5,314.57, along with a remittance of \$649.71, which represented personal income tax of \$531.46 plus interest of \$118.25.

(b) On August 26, 1970, the Income Tax Bureau issued a Notice and Demand for the year 1964 for unreported Federal audit changes in the sum of \$9,501.36, which resulted in an additional tax of \$950.14, plus interest of \$294.16, for a total of \$1,244.30.

(c) On July 15, 1971, the total due of \$1,244.30 on the aforementioned Notice and Demand was reduced by the \$649.71 previously paid on February 18, 1969.

(d) On October 27, 1971, the Income Tax Bureau received another notice of change of taxable income from petitioner reporting an additional Federal audit adjustment for the year 1964 of \$4,186.79, (this represented the balance of the total adjustment of \$9,501.36) along with a remittance of \$579.87 which represented personal income tax of \$418.68 plus interest of \$161.19. Accordingly, the total tax liability for the year 1964 was paid in full.

(e) On June 27, 1973, the Income Tax Bureau applied \$741.12 (from a refund due of \$5,204.54 for the year 1972) to an amount due for the year 1964 as per the Notice and Demand of August 26, 1970. The \$741.12 applied represented a balance due of \$594.59, plus additional interest of \$146.53.

#### CONCLUSIONS OF LAW

A. That petitioner, Sandford R. Johnson, has failed to sustain the burden of proof as required by section 689(e) of the Tax Law in establishing that the income derived from other insurance sales constituted income from his activities as an employee of the Colonial Life Insurance Company of America during the years 1967, 1968, 1969, 1970, 1971 and 1972.

B. That the income derived from other insurance sales constituted income from the carrying on of an unincorporated business and is subject to the unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That the business expenses attributable to unincorporated business income pursuant to petitioner's analysis (Finding of Fact "5") was properly

computed in accordance with audit procedures established by the Audit Division, and are deductible against unincorporated business income within the meaning and intent of section 706 of the Tax Law.

D. That the record clearly indicates that \$741.12 of a refund due for the year 1972 was inadvertently applied to a 1964 tax liability previously paid. Accordingly, a refund of \$741.12 is authorized, but shall be transferred and applied to the personal income tax liability conceded by petitioner pursuant to the Notice of Deficiency of June 28, 1976 (Finding of Fact #3-b).

E. That the petition of Sandford R. Johnson is granted to the extent provided in Conclusions of Law "C" and "D" of this decision.

F. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued June 28, 1976, together with such interest as may be lawfully owing; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER