

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
William Morris (Deceased) :  
and Ruth Morris : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law :  
for the Years 1971 - 1973. :

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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon William Morris (Deceased), and Ruth Morris, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Morris (Deceased)  
and Ruth Morris  
20 Autumn Lea  
Depew, NY 14043

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  
23rd day of January, 1981.

Cornie P. Haglund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
William Morris (Deceased) :  
and Ruth Morris : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law :  
for the Years 1971 - 1973. :

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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon Betty M. Chambers the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Betty M. Chambers  
3879 Bailey Ave., Corner of Main  
Buffalo, NY 14226

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  
23rd day of January, 1981.

*Conrad A. Haglund*

*J. Vredenburg*

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

January 23, 1981

William Morris (Deceased)  
and Ruth Morris  
20 Autumn Lea  
Depew, NY 14043

Dear Mrs. Morris:

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  
Betty M. Chambers  
3879 Bailey Ave., Corner of Main  
Buffalo, NY 14226  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
WILLIAM MORRIS (Deceased) and RUTH MORRIS	:	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 1971 through 1973.	:	

---

Petitioners, William Morris (deceased) and Ruth Morris, 20 Autumn Lea, Depew, New York 14043, 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 1971 through 1973 (File No. 17219).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on July 11, 1980 at 10:45 A.M. Petitioner Ruth Morris appeared with Betty M. Chambers, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

#### ISSUE

Whether petitioner William Morris' activities as an insurance salesman constituted the carrying on of an unincorporated business.

#### FINDINGS OF FACT

1. Petitioners, William Morris (deceased) and Ruth Morris, timely filed New York State combined income tax returns for 1971 through 1973 on which business income was reported from petitioner William Morris' activities as an insurance salesman. Unincorporated business tax returns were not filed for said years.

2. On field audit, the Income Tax Bureau found that the petitioner William Morris' records correctly reflected business income. The Bureau also found that the petitioner did not file unincorporated business tax returns and determined that the salary for petitioner Ruth Morris' services was excessive. Petitioner Ruth Morris performed services for her husband on a regular basis, about four hours per day. Her duties consisted mainly of filing, scheduling and answering the telephone. The Income Tax Bureau estimated that the value of petitioner Ruth Morris' services did not exceed \$2.50 per hour and a \$3,000.00 yearly total was allowed as fair compensation for services rendered. The combination of the net business income plus the disallowance of part of petitioner Ruth Morris' salary resulted in an unincorporated business tax liability.

3. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency for 1971 through 1973 against petitioners, William Morris and Ruth Morris, on which the Bureau disallowed a portion of petitioner Ruth Morris' salary and credited the disallowed portion of her salary to William Morris' taxable income. This Notice asserted additional personal income tax of \$474.90, plus interest of \$53.21, against petitioner William Morris, while at the same time applying the overpayment of \$337.99, plus interest of \$39.05, due to petitioner Ruth Morris to the deficiency of William Morris leaving a balance due of \$151.07.

A second Notice of Deficiency was issued on January 27, 1975 against petitioner William Morris, on which unincorporated business tax was asserted on his income from his activities as an insurance salesman for 1971 through 1973. The Notice imposed unincorporated business tax of \$762.00 plus interest of \$85.26 for a total due of \$847.26.

4. On June 10, 1975, the petitioners filed three claims for refund of personal income and unincorporated business taxes for each of the years based on the notices of deficiency issued January 27, 1975. However, none of the taxes assessed on the notices of deficiency had previously been paid.

5. On June 17, 1976, the petitioners' refund of \$226.89 on their 1975 personal income tax return was applied against the Notice of Deficiency issued January 27, 1975. On December 20, 1976 the Audit Division issued a Notice of Disallowance in full of the petitioners' claim filed June 10, 1975.

6. On July 21, 1977, the petitioners' refund of \$186.30 on their 1976 personal income tax return was applied against the notices of deficiency issued January 27, 1975. On August 8, 1977, the petitioners paid \$790.55 against the notices of deficiency, issued January 27, 1975.

7. At the hearing, the petitioners conceded that the Notice of Deficiency asserting additional personal income tax was correct, therefore, the Notice is no longer at issue.

8. Petitioner William Morris was the Buffalo area district sales manager for Hearthstone Insurance Company of Massachusetts under a written contract. The contract stated "the sales manager agrees that while this agreement is in force, he will not, at any time, without written approval of the company executed by its President or Secretary, directly or indirectly represent any other insurance organization or company or place any insurance except with the company, or aid or abet anyone else in representing any other insurance organization or company or placing any insurance except with the company."

9. Petitioner was required to meet the company's production standards, to attend weekly sales meetings, and to attend training seminars held in Albany, New York. The company exercised substantial supervision and control

over his sales activities and techniques. Even to the point, the company required the petitioner William Morris to use its predetermined oral presentations and to repeat it verbatim. Petitioner was provided a list of customers and "leads" by the company, which he was obligated to pursue.

10. The petitioner William Morris was not reimbursed for any of his business expenses. Petitioner was paid strictly on a commission basis with no withholding or payroll taxes.

11. As Buffalo area district sales manager he was also required to supervise the other salesmen within the area. For this the petitioner received a sales manager commission from the sales of these salesman. These salesmen did not work for the petitioner but had contracts with the company.

#### CONCLUSIONS OF LAW

A. That sufficient direction and control was exercised by the Hearthstone Insurance Company of Massachusetts over petitioner William Morris' activities so as to create an employer-employee relationship; therefore, the commission income he derived from his activities as an employee was not subject to unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of William Morris (deceased) and Ruth Morris is granted to the extent that no unincorporated business tax is due for 1971 through 1973. Therefore, the Notice of Deficiency for unincorporated business tax issued January 27, 1975 is cancelled.

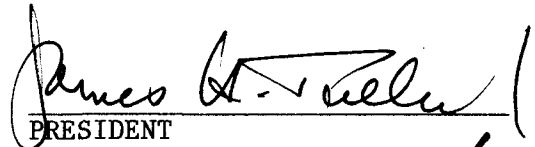
C. That the petition of William Morris (deceased) and Ruth Morris, with respect to the Notice of Deficiency issued January 27, 1975 for personal income tax, is sustained. Therefore, the additional personal income tax due plus interest lawfully owing is \$164.82.

D. That the Audit Division is hereby directed to refund the remaining \$1,038.92, which was previously paid by petitioners in the form of cash or applied refunds, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER