

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus Tax
 Determinations A-Z
 Knox, Clayton T.

TO:

Commissioners Murphy, MacDuff and Conlon

FROM:

Alfred Rubinstein, Hearing Officer

SUBJECT:

Application of Clayton T. Knox for revision or refund of personal income taxes under Article 16 for the year 1953, and unincorporated business taxes under Article 16-A of the Tax Law for the years 1953 and 1954

A hearing was held before me on January 9, 1957 at the office of the State Tax Commission, State Campus, Albany, New York. The appearances and exhibits were as noted on the transcript.

The issues involved whether the activities of taxpayer as a life insurance soliciting agent constituted (1) services performed as an employee, and, (2) practice of an exempt profession.

Taxpayer, a life insurance soliciting agent, filed personal income tax returns for 1953 and 1954, reporting \$31,503.51 commission income for 1953 and \$35,455.99 for 1954. In both years 87% of his income was paid by Mutual of New York and 13% by other companies. The income tax bureau assessed unincorporated business tax for both years and taxpayer filed timely applications for revision or refund. The 1953 assessment for normal tax was conceded to be a proper charge and the hearing was concerned solely with unincorporated business tax.

Taxpayer contended that he was an employee under the constant supervision, direction and control of Mutual of New York who furnished an office, clerical help, telephone service and other facilities and reimbursed him for his other expenses by payment of "service fees" and "efficiency fees." Taxpayer's contract contained the usual provisions: (1) that he was not to be considered an employee but an independent contractor, (2) that the taxpayer was to determine from whom, when, where and how he was to solicit business, and (3) that the taxpayer was forbidden to represent any other life insurance company without prior permission.

The testimony and exhibits disclosed that on taxpayer's return for 1953 he deducted business expenses of \$4,455.00 of which \$4,000.00 was for "clerical salaries"; that on his return for 1954 he deducted business expenses of \$5,000.00 of which \$3,000.00 was for "clerical salaries"; that on both returns deductions for business expenses included telephone, office supplies, advertising, travel and entertainment and other usual business charges; that he employed two people; that "service" and "efficiency" fees of \$3,135.45 for 1953 and \$3,570.74 for 1954 were paid for services rendered to policyholders and not computed on any factor related to his expenses; that such fees were included by him in his commission income; that Mutual reimbursed him by payment to one of

his employees of \$10 per week "directly to the employee"; and that no taxes were withheld from taxpayer's compensation nor unemployment insurance paid on his behalf.

Taxpayer's claim of exempt professional status is not recognized by the Tax Commission; is not included as such under 20 N.J.A.C. 17.27(a); and does not fall within the definition contained in 20 N.J.A.C. 17.27(c).

Order of the State Tax Commission dated June 9, 1966 provides that a life insurance soliciting agent will be considered an independent contractor subject to unincorporated business tax where he, himself, employs one or more permanent employees paying salaries and specifically reimbursed to him. Insurance is claimed reimbursement was not established, nor was it claimed that such reimbursement was "substantial" as defined in the Commission Memorandum of July 12, 1966, and considering that taxpayer's income from outside companies was about one-seventh of his total income, the nature and extent of his expenses, his employment of two people and the fact that income taxes withheld taxes nor paid unemployment insurance, I am of the opinion that his activities were those of an independent contractor subject to unincorporated business tax and that the assessments should be sustained.

This opinion is restricted to those applications for 1964 and 1965 under Article 14-A. Section 703(f) of Article 14, applicable to years ending December 31, 1965 and thereafter, originally provided that salemen of "goods, wares or merchandise" would not be deemed engaged in an unincorporated business by reason of representing more than one principal. By Chapter 603 of the Laws of 1961, the statute was amended to add insurance salesmen, and to further provide that salesmen would not be deemed engaged in an unincorporated business by reason of employment of "clerical and secretarial assistance." Accordingly, for the years 1964 through 1965 no assessments were issued against this taxpayer whose activities were, for such years, not deemed subject to unincorporated business tax (see letter dated August 17, 1966 from the Income Tax Bureau to taxpayer's representatives).

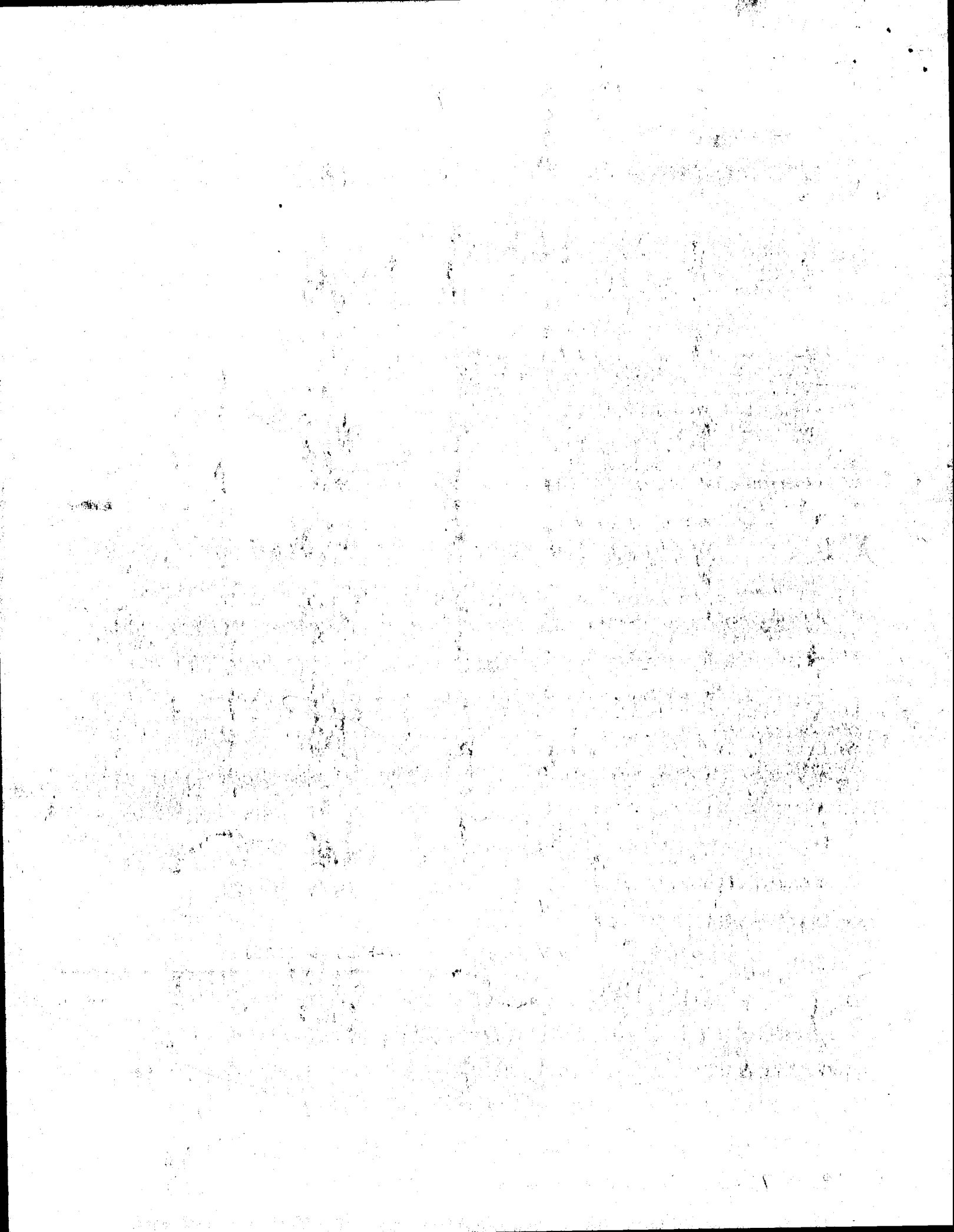
The determination of the Tax Commission should be in the form submitted herewith.

/s/

ALFRED RUBINSTEIN

ALR:W
Enc.

April 27, 1967



**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE APPLICATIONS

OF

CLAYTON T. HICK

**FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEARS 1953, AND UNINCORPORATED BUSINESS
TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR
THE YEARS 1953 AND 1954**

Clayton T. Hick having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1953, and unincorporated business taxes under Article 16-A of the Tax Law for the years 1953 and 1954, and a hearing having been held before Alfred Robinson, Hearing Officer of the Department of Taxation and Finance, on January 9, 1957 at the office of the State Tax Commission, State Capitol, Albany, New York, at which hearing the taxpayer and his representative, E. Michael Krotts, Esq. appeared, and the matter having been duly considered and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income tax returns for 1953 and 1954 on which he reported \$51,555.41 as consolidated income for 1953 and \$52,400.37 as consolidated income for 1954; that for 1953 taxpayer deducted business expenses of \$5,400.00 of which \$4,500.00 was for checked salaries; that for 1954 taxpayer deducted business expenses of \$5,555.00 of which \$4,500.00 was for checked salaries; that the balance of deductions for business expenses for both years included

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charges for telephone, office supplies, advertising, travel and entertainment and other usual business charges.

(12) That on August 21, 1935 the Internal Tax Bureau issued Assessment # 92157 against the taxpayer for 1935, imposing additional normal tax of \$27.50 based on disallowance of a \$1,000 deduction claimed for salary, and allowance of a dependency credit of \$400 in lieu thereof, and for unincorporated business taxes of \$27.50, based on a finding that taxpayer's activities constituted carrying on of an unincorporated business; that on January 21, 1937 the Internal Tax Bureau issued Assessment # 222229 against the taxpayer for 1936 for paying unincorporated business taxes of \$274.25 on a similar finding; that the taxpayer contends that so much of Assessments # 92157 for 1935 as imposed additional normal tax of \$27.50 is incorrect and improper; that the taxpayer filed timely applications for revision or refund of the balance of Assessment # 92157 and Assessment # 222229, and filed timely demands for hearing on the question of unincorporated business taxes.

(13) That during 1933 and 1934 the taxpayer was engaged in a life insurance soliciting agent for Mutual of New York under a written contract which included provisions, (a) that he was not to be considered an employee, but an independent contractor, (b) that the taxpayer was to determine how, when, where, and how he was to solicit business, and (c) that the taxpayer was forbidden to represent any other life insurance company without prior permission; that 67% of taxpayer's commissions were paid by Mutual of New York and 33% by other companies during each year; that during those years

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1801. It is a very important document, as it contains the President's first message to the Congress. The letter is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States. It is a very long letter, and it covers a wide range of topics, including the state of the Union, the progress of the government, and the President's plans for the future. The letter is a very important document, as it contains the President's first message to the Congress. It is a very long letter, and it covers a wide range of topics, including the state of the Union, the progress of the government, and the President's plans for the future.

2. The second part of the document is a letter from the President of the United States to the Congress, dated January 3, 1801. It is a very important document, as it contains the President's first message to the Congress. The letter is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States. It is a very long letter, and it covers a wide range of topics, including the state of the Union, the progress of the government, and the President's plans for the future. The letter is a very important document, as it contains the President's first message to the Congress. It is a very long letter, and it covers a wide range of topics, including the state of the Union, the progress of the government, and the President's plans for the future.

Traveler used various facilities furnished by Island of New York, including local telephone service; that the cost of toll charges, long distance calls and other calling expenses incurred by Traveler were paid by him; that Traveler employed two people for clerical assistance; that except for \$10 per week paid by Island of New York directly to one of his employees, Traveler received no reimbursement for his expenses; that "traveler" fees and "attorney" fees that were paid to the Traveler by Island of New York were not reimbursement for his expenses, but additional compensation for calling witnesses and not computed on any basis related to his expenses; that neither Island of New York nor any of his other principals withheld income taxes from his compensation or paid any unemployment insurance contributions on his behalf, and that, except for matters of general policy, neither Island of New York nor any of Traveler's other principals exercised any supervision, direction or control over the Traveler in his business activities.

(4) That the Traveler's activities as a life insurance collecting agent did not constitute an occupation in which he rendered personal services to others by application of professional knowledge or learning; that Traveler's activities consisted of solicitation of sales of life insurance policies on behalf of his principals, life insurance companies, who paid him commissions and fees.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

RECOMMENDS:

The following information was obtained from the records of the [redacted] Department of the Interior, Bureau of Land Management, regarding the [redacted] land grant.

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(A) That during 1933 and 1934 the taxpayer's activities as a life insurance soliciting agent were carried on by him as an independent contractor, and not as an employee; that the same did not constitute the practice of a profession, the income of which was derived from personal services rendered to others within the meaning of section 305 of the Tax Law; and that taxpayer's income reported for each year was derived from a business carried on by him.

(B) That taxpayer contends that the deduction of \$1,000 taken by him for alimony on his income tax return for 1933 was properly disallowed; and that an allowance of a dependency credit of \$400 in his return was properly made.

(C) That, accordingly, the assessments against the taxpayer imposing additional normal tax for 1933 in the sum of \$37.35 and undistributed business taxes for 1933 in the sum of \$307.65, and undistributed business taxes for 1934 in the sum of \$374.35 are correct; that the amounts set forth therein are due and owing together with interest, if any, and other statutory charges; that said assessments do not include any tax or other charges which could not have been lawfully demanded, and that taxpayer's applications for revision or refund with respect thereto be and the same are hereby denied.

Witness Albany, New York the 17th day of May, 1937.

SENATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

/s/

JAMES R. MACDUFF

/s/

WALTER MACLYN CONLON

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