L 9 (11-65)

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

BUREAU OF LAW

MEMORANDUM

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 $[illegible] commission income for 1953 and $[illegible] for 1954. In both years [illegible]% of his income was paid by Mutual of New York and [illegible]% 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 $[illegible] of which $[illegible] was for "clerical salaries"; that on his return for 1954 he deducted business expenses of $[illegible] of which $[illegible] 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 [illegible] people; that "service" and "efficiency" fees of $[illegible] for 1953 and $[illegible] 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

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

/s/ ALFRED RUBINSTEIN

[illegible]

[illegible]

[illegible]

5-10-67

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

CLAYTON V. [illegible]

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR 1955, AND UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1955 and 1956

Clayton V. [illegible] having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1955, and unincorporated business taxes under Article 16-A of the Tax Law for the years 1955 and 1956, and a hearing having been held before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance, on January 9, 1957 at the office of the State Tax Commission, State Campus, Albany, New York, at which hearing the taxpayer and his representative, L. Richard [illegible], Esq., appeared, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income tax returns for 1955 and 1956 on which he reported $[illegible] as commission income for 1955 and $[illegible] as commission income for 1956; that for 1955 taxpayer deducted business expenses of $[illegible] of which $[illegible] was for chauffeur salary; that for 1956 taxpayer deducted business expenses of $[illegible] of which $[illegible] was for chauffeur salary; that the balance of deductions for business expenses for both years included

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

(2) That on August 31, 1956 the Income Tax Bureau issued Assessment #W 93157 against the taxpayer for 1955, imposing additional normal tax of $97.50 based on disallowance of a $1,000 deduction claimed for alimony, and allowance of a dependency credit of $400 in lieu thereof, and for unincorporated business taxes of $377.62, based on a finding that taxpayer's activities constituted carrying on of an unincorporated business; that on January 31, 1957 the Income Tax Bureau issued Assessment # [illegible] against the taxpayer for 1956 imposing unincorporated business taxes of $374.56 on a similar finding; that the taxpayer concedes that so much of Assessment # W 93157 for 1955 as imposed additional normal tax of $97.50 is correct and proper; that the taxpayer filed timely applications for revision or refund of the balance of Assessment # W 93157 and Assessment # [illegible], and filed timely demands for hearing on the imposition of unincorporated business taxes.

(3) That during 1955 and 1956 the taxpayer was engaged as 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 from whom, 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 87% of taxpayer's commissions were paid by Mutual of New York and 13% by other companies during each year; that during these years

taxpayer used office facilities furnished by Mutual of New York, including local telephone service; that the cost of toll charges, long distance calls and other selling expenses incurred by taxpayer were paid by him; that taxpayer employed two people for clerical assistance; that except for $10 per week paid by Mutual of New York directly to one of his employees, taxpayer received no reimbursement for his expenses; that "override" fees and "efficiency" fees that were paid to the taxpayer by Mutual of New York were not reimbursement for his expenses, but additional compensation for selling activities and not computed on any basis related to his expenses; that neither Mutual 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 Mutual of New York nor any of taxpayer's other principals exercised any supervision, direction or control over the taxpayer in his business activities.

(4) That the taxpayer's activities as a life insurance soliciting agent did not constitute an occupation in which he rendered personal services to others by application of particular skill, knowledge or learning; that taxpayer'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

DETERMINES:

(A) That during 1955 and 1956 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 386 of the Tax Law; and that taxpayer's income reported for such years was derived from a business carried on by him.

(B) That taxpayer concedes that the deduction of $1,000 taken by him for alimony on his income tax return for 1955 was properly disallowed; and that an allowance of a dependency credit of $[illegible] in lieu thereof was properly made.

(C) That, accordingly, the assessments against the taxpayer imposing additional normal tax for 1955 in the sum of $[illegible] and unincorporated business taxes for 1955 in the sum of $[illegible], and unincorporated business taxes for 1956 in the sum of $[illegible] 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.

Dated: Albany, New York the 17th day of May, [illegible].

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ JAMES R. MACDUFF
Commissioner

/s/ WALTER MACLYN CONLON
Commissioner