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Unincorp. Bus. Tax Determinations A-Z

BUREAU OF LAW

MEMORANDUM

Shea, Edward J. & Evelyn D.

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: EDWARD J. AND EVELYN D. SHEA

Petition for a Redetermination of a Deficiency of Unincorporated Business Tax under Article 23 of the Tax Law for the Year 1962

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on June 21, 1967. The appearances and exhibits produced were as shown in the stenographic minutes submitted herewith.

The issues involved herein are whether the activities of the taxpayer, as a sales representative for the Knights of Columbus in connection with the sale of life insurance, constituted the carrying on of an unincorporated business, and whether monies received by the taxpayer in connection with the sale of his general insurance business constituted income from an unincorporated business.

The taxpayer filed a joint New York State income tax return for the year 1962 in which he reported business income of $13,006.51 as an insurance agent. The business income was received as life insurance sales commissions and monies received from the sale of his general insurance brokerage business. The taxpayer did not file an unincorporated business tax return for the year. A notice of deficiency and a statement of audit changes were issued for the year 1962 (File No. 2-3173879) on the basis that the taxpayer's income as general agent constituted the carrying on of an unincorporated business, and assessed unincorporated business tax and interest due in the amount of $219.28.

The taxpayer is a sales representative of the Knights of Columbus for whom he sells life insurance exclusively to members of that Order and their families. His contract with the Order designates him as a general agent and it provides that nothing in the contract should be construed to create the relationship of employer and employee between the Order and the taxpayer. The contract further provides that the taxpayer shall perform his work at such time and places, and in such manner as in his judgment will best serve the interests of the Order and

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MEMORANDUM

TO:

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SUBJECT:

its membership. He was required to devote his full time in behalf of the Knights of Columbus. He was expected to meet an annual sales quota. All records and papers relating to transactions by or for the Knights of Columbus were the property of the Order. The taxpayer received commissions on sales of life insurance made by him and also on those made by local sales agents of the Knights of Columbus. Social security taxes were deducted from these commissions. Income taxes were not deducted from them. He was covered by workmen's compensation insurance, but was not covered by unemployment compensation insurance nor disability benefits insurance. He was a member of the Knights of Columbus employee pension plan. The taxpayer employed no assistants and maintained no office. He was reimbursed for his expenses connected with his attendance at conventions and meetings at which he was required to be present by the Knights of Columbus. He was not reimbursed for any of his other selling expenses which included expenses for telephone, printing, stationery, stamps, advertising, travel and entertainment expenses. During the year these selling expenses amounted to $5,3[illegible].61. The taxpayer recommends the appointment and discharge of local sales agents whom he supervises and trains. He assists some of these sales agents to make sales and checks the accuracy of insurance applications and reviews and corrects premium computations prepared by such agents. The taxpayer awards prizes to the local sales agents as incentives for them to increase their sales. He is not reimbursed for the cost of these prizes.

Prior to 1959 the taxpayer carried on a general insurance brokerage business which was separate from his activities in behalf of the Knights of Columbus. In 1959 he sold the accounts of his brokerage business to another broker under an agreement whereby the taxpayer was to receive 50 percent of all commissions on renewals of the accounts. In 1962 the taxpayer received $3,[illegible].58 as his share of the renewal commissions. The taxpayer performs no duties or work in connection with the accounts.

While the facts in this case present a close question, it is my opinion that the taxpayer's activities in connection with the sale of life insurance for the Knights of Columbus did not constitute the carrying on of an unincorporated business and accordingly income derived from that source was not subject to unincorporated business tax. The taxpayer's activities as the Order's sales representative do not fit the pattern of general agents of life insurance companies who are held to be subject to the unincorporated business tax. His activities are similar to that of a full time life insurance soliciting agent. Although the taxpayer's contract with the Knights of Columbus negates the relationship of employer and employee, the provisions of the

agreement are not controlling. In every case all the relevant facts and circumstances are to be considered in determining if an insurance agent is subject to the unincorporated business tax (see Tax Law Rulings dated June 9, 1959, 20 NYCR 281.3). The taxpayer's income from the liquidation of the general insurance brokerage business was insufficient to subject him to tax.

For the reasons stated above I recommend that the determination of the State Tax Commission granting the taxpayer's petition be substantially in the form submitted herewith.

/s/ FRANCIS V. DOW
Hearing Officer

April 23, 1968
FVD:nn

Enc.

9-18-68

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE REVIEW

OF

EDWARD J. AND EVELYN D. SEBA

FOR A REDETERMINATION OF A DEFICIENCY OF UNINCORPORATED BUSINESS TAX UNDER ARTICLE 23 OF THE TAX LAW FOR THE YEAR 1962

The taxpayers herein having filed a petition for a redetermination or refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1962, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on June 21, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Edward J. Seba, appeared and testified and was represented by counsel, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a joint New York State income tax return for the year 1962, in which he reported business income of $13,006.51 as an insurance agent; that the taxpayer did not file an unincorporated business tax return for the year 1962.

(2) That a notice of deficiency and statement of audit changes were issued for the year 1962 (File No. B-317373) under date of August 13, 1965, on the basis that the activities of the taxpayer as a general agent constituted the carrying on of an unincorporated business, and the income derived therefrom, is subject to the unincorporated business tax pursuant to Article 23 of the Tax Law, and finding unincorporated business tax and interest due in the amount of $219.26.

(3) That the taxpayer carried on a general insurance brokerage business prior to 1959; that in 1959 the taxpayer transferred his accounts to another broker under an arrangement whereby the taxpayer was to receive 50 percent of all commissions earned from renewals written by the broker on the taxpayer's accounts; that the taxpayer performs no work and has no duties in connection with the accounts transferred to the broker; that in 1962 the taxpayer received $3,318.93 as his share of the renewal commissions.

(4) That the taxpayer is a sales representative of the Knights of Columbus, in connection with the sale of life insurance policies issued by the Order to its members; that the taxpayer receives commissions on sales of policies sold directly by him and by local representatives of the Knights of Columbus, whom the taxpayer supervises; that in 1962 the taxpayer received $[illegible],[illegible]6.59 as his commissions on the sale of life insurance policies.

(5) That the taxpayer is designated as a general agent in his contract with the Knights of Columbus; that the taxpayer's sales territory is located in New York County, Bronx County, and Lower Westchester County; that the contract provides that nothing contained therein should be construed to create the relationship of employer and employee between the Knights of Columbus and the taxpayer; that taxpayer's contract provides that the taxpayer shall perform his work at such times and places, and in such manner as in his judgment will best serve the interest of the Order and its membership, and shall devote his full time and entire attention and energy to the services required under the contract and any other authorized contract with the Order, and shall not engage in any other occupation or business except as authorized by the Order; that all records and papers relating to transactions by or for the Knights of Columbus in the hands of the taxpayer remain the

property of the Order; that the taxpayer was expected to meet an annual sales quota set by the Knights of Columbus.

(6) That deductions were taken from the taxpayer's commissions received from the Knights of Columbus for social security taxes; that no deductions were taken from the commissions for income taxes; that the taxpayer was provided coverage for workman's compensation insurance by the Knights of Columbus; that the Knights of Columbus did not provide coverage of the taxpayer of unemployment insurance or disability benefits insurance; that the taxpayer was covered by the Knights of Columbus employee's pension plan.

(7) That the taxpayer employed no assistants and maintained no office; that the taxpayer was reimbursed solely for his expenses connected with attendance at the conventions and meetings when he was required by the Knights of Columbus to be present at them; that the taxpayer was not reimbursed for his other selling expenses incurred as a sales representative for the Knights of Columbus; that the taxpayer's other expenses included telephone, printing, stationery, stamps and other supplies, licenses, and bonds, advertising, travel and entertainment expenses, which selling expenses totaled $5,358.61 during 1962.

(8) That the Knights of Columbus controlled sales policies; that although the taxpayer recommended the appointment and discharge of local sales representatives, the sales representatives were appointed only by the Knights of Columbus; that the taxpayer supervises and trains the local sales representatives in order to increase production and he assists them in some instances in order to make sales; that it is the duty of the taxpayer to check the accuracy of insurance applications for errors and correct premium computations prepared initially by the local sales agent; that the

taxpayer does not collect premiums, process claims or endorsements on policies; that the taxpayer awards prizes to the local sales agents as incentives for them to increase their sales; that the taxpayer is not reimbursed for the cost of these prizes.

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

RULES:

(A) That the taxpayer's activities as a sales representative for the Knights of Columbus were conducted by him as an employee and not as an independent contractor; that such activities did not constitute the carrying on of an unincorporated business within the intent and meaning of section 703 of the Tax Law.

(B) That accordingly, the notice of deficiency and statement of audit changes for the year 1962 (File No. S-3173079) are not proper and should be cancelled and the same are hereby cancelled in full.

Dated: Albany, New York this 19 day of September, 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

COMMISSIONER