

UBT Determinations A-Z  
Green, George C.

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
GEORGE C. GREEN	:	Affidavit of Mailing
	:	of Notice of Decision,
	:	by Registered Mail
For a Redetermination of a Deficiency	:	
or a Refund of UNINCORPORATED BUSINESS	:	
Taxes under Article(s) 23 of the Tax	:	
Law for the year(s) 1961, 1962 and 1963	:	

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State of New York  
County of Albany

PATRICIA WHITMAN, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 2nd day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Mr. George C. Green the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. George C. Green, 595 Seneca Parkway, Rochester, NY and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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  
2nd day of July, 1969.

Grace E. Pritchard

Patricia Whitman

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of :

GEORGE C. GREEN :

Affidavit of Mailing  
of Notice of Decision,  
by Registered Mail

For a Redetermination of a Deficiency :  
or a Refund of UNINCORPORATED BUSINESS :  
Taxes under Article(s) 23 of the Tax :  
Law for the year(s) 1961, 1962 and 1963 :

State of New York  
County of Albany

PATRICIA WHITMAN , being duly sworn, deposes and  
says, that she is an employee of the Department of Taxation and  
Finance, and that on the 2nd day of July , 1969, she served  
the within Notice of Decision (or of "Determination") by registered  
mail upon Mr. John J. Considine, Jr., representative for  
the petitioner in the within proceeding, by enclosing a true copy  
thereof in a securely sealed postpaid wrapper addressed as follows:  
Mr. John J. Considine, Jr., 200 Terminal Bldg. 65 Broad St.,  
Rochester, NY  
and by delivering the same at Room 214a, Building 8, Campus, Albany,  
marked "REGISTERED MAIL" to a messenger of the Mail Room, Building  
9, Campus, Albany, to be mailed by registered mail.

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

2nd day of July , 1969.

*Grace E. Pritchard*

*Patricia Whitman*

To Mr. Rook.....

Re: George C. Green - Art. 23-1962/63/64

Based on my review of the file and memorandum of the hearing officer, I recommend approval of the attached Decision which was prepared by Mr. Molineaux.

May 22, 1969

A handwritten signature in dark ink, appearing to be 'L.A. Newman', written in a cursive style.

From Lawrence A. Newman

## BUREAU OF LAW

## MEMORANDUM

*U. B. T. Determinations**Green, George A-2*

TO: State Tax Commission

FROM: Vincent P. Nolineaux, Hearing Officer

SUBJECT: George C. Green  
Petition for redetermination of deficiency  
and refund of unincorporated business tax  
under Article 23 of the Tax Law for the  
years 1962, 1963 and 1964

A hearing on the above matter was held before me at the office of the State Tax Commission, 65 Broad Street, Rochester, New York, August 8, 1967.

The question at issue is whether taxpayer's activities as a life insurance agent constitute the carrying on of an unincorporated business making the income therefrom subject to unincorporated business tax under Article 23 of the Tax Law.

Taxpayer is a full-time agent for Guardian Life Insurance Company of America. He has an office with six other agents in the same general status at the general agency managed by one, Arthur Kaufman. Taxpayer's name does not appear on the outside door of the office. He does not pay rent, telephone or clerical services. He is required to maintain minimum production standards.

Social Security deductions are made by the general agent. Group insurance is paid by the Guardian Life Insurance Company and major medical coverage is paid partly by Green and partly by the Guardian Life Insurance Company. Mr. Green also participates in a pension program supported by the company and the general agent based upon years of service.

Taxpayer is required to submit all life, health and group pension business first to the company, Guardian Life Insurance Company of America.

Income tax deductions are not made from Mr. Green's compensation.

The office equipment is owned by the company.

Guardian Life Insurance Company pays taxpayer's expenses for attending conventions. The conventions he attends are based upon the quantity of his production.

Taxpayer uses two types of stationery, one of which has the name of the company in large letters and his name as C.L.U. (Certified Life Underwriter). The other stationery has only taxpayer's name as C.L.U.

Refunds of unincorporated business tax were made to Mr. Green for 1957 and 1958.

Mr. Green's sources of income for the years under review are as follows: (Tax Commission's Exhibit 16)

	1962	1963	1964
Guardian Life Ins. Co.	\$7,983	\$11,669	\$10,283
John Hancock Life Ins. Co.	1,681	311	317
Aetna Life Ins. Co.	46	39	0
Conn. General Life Ins. Co.	249	197	430
Mass. Mutual Life Ins. Co.	0	0	202
Mass. Indemnity & Life Ins. Co.	0	0	23
Aetna Casualty & Surety Co.	2,187	3,149	2,134
U. S. Fidelity & Guaranty Co.	1,910	1,866	2,119

The ruling of the State Tax Commission of June 9, 1959 provides that:

"A full-time life insurance soliciting agent whose principal activity is the solicitation of insurance for one life insurance company and who is forbidden by contract or practice from placing insurance with any other company without the consent of his principal company; who uses office space provided by the company or its general agent, is furnished stenographic assistance and telephone facilities without cost, is subject to general and particular supervision by his company of sales, is subject to company established production standards, will generally not be subject to the unincorporated business tax on commissions received from his prime company, regardless of the agreement existing between him and the insurance company, but commissions received from other companies will be subject to such tax."

In Matter of Britton, (1965) 22 A D 2d 987, the Court said that to hold a salesman engaged in business it must be found that (a) he maintains an office, (b) employs one or more assistants, or (c) otherwise regularly carries on a business. The taxpayer in that case represented eleven companies.

It appears that a notice of deficiency was issued, since the contract between the taxpayer and Guardian Life did not specifically forbid the taxpayer to place insurance with any other company without the company's consent. However, the practice of the company was to

demand the consent and thus in accord with ruling which permits either contract or practice.

Based upon the foregoing, I am of the opinion that the taxpayer in this case is an employee of Guardian Life Insurance Company and his income from that company is not subject to unincorporated business tax but that with respect to income received from other companies he is an independent agent and such commissions are subject to tax under Article 23 of the Tax Law, but such income for the years in question was not of a sufficient amount to require payment of a tax. Therefore, I recommend that the decision of the State Tax Commission cancelling the assessments be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

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Hearing Officer

VPM:dv

Enc.

February 7, 1969

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION  
OF  
GEORGE C. GREEN  
FOR REDETERMINATION OF UNINCORPORATED  
BUSINESS TAX UNDER ARTICLE 23 OF THE  
TAX LAW FOR THE YEARS 1961, 1962 AND  
1963  
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George C. Green having duly filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961, 1962 and 1963 and a hearing having been held at the office of the State Tax Commission at 65 Broad Street, Rochester, New York before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance and the record having been duly examined and considered

The State Tax Commission hereby finds:

(1) That the taxpayer filed New York State resident income tax returns for the years 1962, 1963 and 1964 on which the amount shown to be due was paid, but did not file unincorporated business tax returns or pay unincorporated business tax.

(2) That on September 26, 1966 the State Tax Commission issued notices of deficiency in the amounts of \$27.94, \$216.08 and \$163.58 for the respective years.

(3) That taxpayer is a full-time agent for Guardian Life Insurance Company of America and has an office with the general agent together with six other agents in the same general status.

(4) That taxpayer's name does not appear on the outside door of the office; that he does not pay for rent, telephone or clerical services and he is required to maintain minimum production standards.

(5) That Social Security payments are deducted from his commissions; that group insurance is paid by the company and major medical coverage is paid part by Green and part by the company.

(6) That taxpayer participates in a pension program supported by the company and the general agent based upon years of service.

(7) That taxpayer is required to submit all life, health and group pension business first to Guardian Life Insurance Company.

(8) That income tax deductions are not made from Mr. Green's commissions and office equipment is owned by the company. That Guardian Life pays taxpayer's expenses for attending conventions and the ones he attends are based upon production.

(9) That the stationery used by Mr. Green does not indicate a separate agency.

(10) That refunds of unincorporated business tax were made to Mr. Green in 1957 and 1958.

(11) That Mr. Green's sources of income for the years under review are as follows: (State Tax Commission's Exhibit 16)

	1962	1963	1964
Guardian Life Ins. Co.	\$7,988	\$11,669	\$10,283
John Hancock Life Ins. Co.	1,681	311	317
Aetna Life Ins. Co.	46	39	0
Conn. General Life Ins. Co.	249	197	430
Mass. Mutual Life Ins. Co.	0	0	202
Mass. Indemnity & Life Ins. Co.	0	0	23
Aetna Casualty & Surety Co.	2,187	3,149	2,134
U. S. Fidelity & Guaranty Co.	1,910	1,866	2,119

Based upon the foregoing findings the State Tax Commission hereby

DECIDES:

(A) That taxpayer is an employee of Guardian Life Insurance Company of American within the meaning of section 703(b) of the Tax Law with respect to his commissions from that company.



(B) That taxpayer is an independent agent and subject to Article 23 of the Tax Law with respect to commissions received from other companies.

(C) That the commissions received from other companies for the years 1962, 1963 and 1964 were insufficient to require the payment of unincorporated business tax, under Article 23 of the Tax Law.

(D) That the determination of deficiency File No. 26080007 for the years 1962, 1963 and 1964 is incorrect and unauthorized and is cancelled in full.

Dated: Albany, New York

this 24th day of June , 1969

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER