

1969

U.B.T. Determinations  
A-Z  
Mason, John H.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN A. & JOAN W. WILSON

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) 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) 1963, 1964  
and 1965

State of New York  
County of Albany

Janet Wright, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of September, 1969, she served the within  
Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon John A. &  
Joan W. Wilson (~~XXXXXXXXXXXX~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. & Mrs. John A. Wilson  
17 Oriole Avenue  
Bronxville, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
~~of~~) 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

24 day of September, 1969.  
Grace E. Pritchard

Janet Wright

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

JOHN A. & JOAN W. WILSON

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State of New York  
County of Albany

Janet Wright, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of September, 1969, she served the within  
Notice of Decision (~~of the Department~~) by (certified) mail upon

J. K. Lasser and Company (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: J. K. Lasser and Company  
666 5th Avenue  
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

24 day of September, 1969.  
Grace E. Pritchard

Janet Wright

## DEPARTMENT OF TAXATION AND FINANCE

## MEMORANDUM

TO: Mr. Edward Rook  
FROM: Mr. Lawrence A. Newman  
SUBJECT: John A. & Joan W. Wilson  
Decision allowing claims for refund  
Unincorporated Business Taxes  
Years 1963, 1964 and 1965.

DATE September 4, 1969  
OFFICE Hearing Unit

A formal hearing was held before Vincent P. Molineaux, Esq., hearing officer, on January 10, 1969.

Mr. John A. Wilson was engaged in the full-time solicitation of life insurance for the Equitable Life Assurance Society. Mr. Wilson had filed Unincorporated Business Tax returns for the years 1963, 1964 and 1965. He has filed claims for refund for these years based on his contention that he is exempt under the provisions of Section 703(f) of the Tax Law. This section relates to the exemption of sales representatives who utilize space for the storage of business records and employ stenographic and clerical assistance but do not otherwise carry on a business. Life-insurance salesmen generally fall within this sub-division.

There are, however, some unusual features in the case of Mr. Wilson.

1. Mr. Wilson reimbursed his principals for the use of office space and stenographic assistance, based upon the amount of first year commissions.
2. Mr. Wilson's father and grandfather had been general agents for Equitable operating their own independent agencies under the style name of the Wilson Agency. Mr. Wilson continued to use the name for its goodwill value, although he was never a general agent for the company.
3. One of the stenographers who was assisting Mr. Wilson was also a Certified Life Underwriter, and her duties may have included advice and decision making, although there was scant testimony concerning her actual duties.
4. Mr. Wilson included Federal schedule "C", Profit from Business or Profession, with his Unincorporated Business Tax Return for the year 1965, and completed Schedule "A" of State form IT-202 for the years 1963 and 1964, which forms are usual for operations of businesses or professions.


On the other hand, the occupation listed on forms IT-201 for these years was "Life Insurance Salesman."

5. Mr. Wilson claims deductions on his returns in such categories as automobile expense, furniture, fixtures, draperies, rent, advertising, dues and subscriptions, entertainment, telephone, travel, postage, stationary, printing, secretarial expense, promotion expense, and commissions to another agent. Although none of these expenses incurred is conclusive of a finding of active business operation, the broad spectrum of this list undoubtedly influenced the operating bureau in their denial of the refund claim. The substantiation of these expenses claimed is not in issue.

Conclusion

The evidence and arguments of the taxpayer and the operating bureau are closely balanced. Mr. Molineaux, the hearing officer, advised me verbally that he had been favorably disposed toward granting the taxpayers' claims for refund.

Therefore, I am offering my draft of a decision granting the claims for refund, for the approval of the Commission.

  
LAWRENCE A. NEWMAN  
Hearing Officer

LAN:pw

## STATE TAX COMMISSION

## DECISION

2. On October 13, 1966, the petitioners filed claims for credit or refund of unincorporated business taxes for the years 1963, 1964 and 1965. The petitioner, John A. Wilson contends that as an insurance agent he was exempt from the Unincorporated Business tax pursuant to Section 703(f), Article 23 of the Tax Law, had erroneously filed returns and paid the tax for the years in question, and was entitled to a full refund of the Unincorporated Business Taxes.

3. The petitioner, John A. Wilson, is a Chartered Life Underwriter and a soliciting life insurance agent. On February 12, 1954, the petitioner signed an agreement with the Equitable Life Assurance Society. The agreement was in effect during the years 1963, 1964 and 1965. The terms of the agreement authorized the petitioner to solicit life insurance on behalf of the said insurance company subject to various conditions and limitations. The agreement specified the commissions to be paid to the agent based upon the types and amounts of insurance sold. The agent agreed not to submit life insurance proposals to any other company unless authorized by the Equitable Society. The agent was not awarded an exclusive territory, could not alter the form or conditions of insurance policies, or bind the Equitable Society in any manner. The agent agreed to participate, when eligible, in the Equitable Society's Retirement Plan for Agents. The agreement could be terminated by either party upon written notice. A final clause specified that nothing contained in the agreement shall be construed to create the relationship of employer and employee between the Equitable Society and the Agent.

4. The petitioner, John A. Wilson, conducted his insurance activities at 331 Madison Avenue, New York City in space provided by the Queally Agency of the Equitable Society. The petitioner required the assistance of two secretaries in his office work, one of whom was a Certified Life Underwriter. The claimant filed New York City Commercial rent and occupancy tax and General Business Tax returns. The petitioner used the trade name "Wilson Agency" on letterheads and a telephone listing. The petitioner employed an automobile, furniture, fixtures and draperies in his business activities and claimed depreciation upon these assets on his Federal income tax returns. Other business expenses deducted on the Federal returns included rent, advertising, dues and subscriptions, entertainment, telephone, travel, postage, stationery, printing, secretarial

expense, promotion expense, and commissions to another agent. The petitioner accepted applications for life insurance which were placed with other insurance carriers.

5. The petitioner has not pleaded or established that he is an employee of the agency or insurance company, or that he is subject to any supervision other than to limit the form of policies which he may accept applications for, or the insurability of the applicant. The petitioner is not restricted to any territory or class of customers. Throughout the years in issue, the petitioner partially reimbursed Equitable for expenses incurred by Equitable in operating the Queally Agency, in an amount based on the claimant's first year commission income. Such reimbursement arrangements, worked out between agents and agency managers, are considered unusual by the insurance company.

6. The petitioner did maintain the style and trade name of "Wilson Agency" which had been used by his father and grand-father for many years. The general agency known by that name was no longer in existence, but the petitioner believed that the continued use of said name and good will would aid in the furtherance of his insurance sales. The petitioner never operated as a general agent during his association with the Equitable Society.

7. The petitioner had sold insurance for more than one enterprise, had utilized space for the maintenance and storage of records normally used in the course of business and employed clerical and secretarial assistance. The use of a trade name and the reimbursement to his principal of part of the expenses of the office used were incident to the furtherance of these purposes. Within the meaning of Section 703 (f) of the Tax Law, the petitioner is not found to be maintaining an office or employing one or more assistants, other than previously enumerated.

Based on the foregoing findings, the State Tax Commission hereby

DECIDES:


(a) The activities of the petitioner, John A. Wilson, as a full time solicitor of insurance do not fall within the definition of an unincorporated business as contained in Section 703 of the Tax Law.

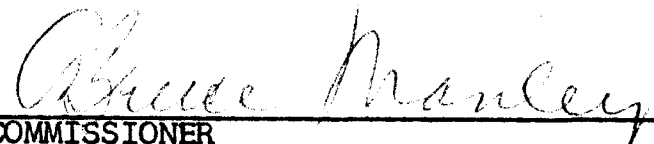
(b) The petitioner did file New York State Unincorporated Business Tax Returns for the years 1963, 1964 and 1965, and paid tax as shown thereon of \$1610.08 for 1963, \$1604.00 for 1964 and \$1642.02 for 1965.


(c) The petitioner, John A. and Joan W. Wilson, did timely file claims for refund of the said amounts of Unincorporated Business taxes.

(d) The aforesaid amounts of Unincorporated Business taxes have been erroneously paid to the Department of Taxation and Finance by the petitioners and the Department shall make refund thereof to the petitioners.

(e) Interest shall be added to the said overpayment of taxes being refunded to the petitioners and payment thereof shall be made to the petitioners in accordance with Section 688 of the Tax Law.

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

DATED: September 19, 1969



To..... Mr. Rook .....

To be submitted to Commission;  
upon your approval.

September 4, 1969

LAN:pw

A handwritten signature in dark ink, appearing to read 'LAN', with a large, sweeping flourish extending from the end.

From Lawrence A. Newman