

STATE OF NEW YORK  
STATE TAX COMMISSION

Greene  
UBT - 1970

In the Matter of the Petition

of

Edward Greene

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) 1964 :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

*deposited  
cc 1/2 H  
99-339*

State of New York  
County of Albany

Claire A. Draves , 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 30th day of November , 1970 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Jay M. Landa,  
Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Jay M. Landa, Esq.  
525 Northern Blv.  
Great Neck, 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

30th day of November , 1970

*James Wright*

*Claire A. Draves*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
Edward Greene

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) 1964

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Claire A. Draves, 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 30th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Edward Greene (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edward Greene  
991 Ceil Place  
Baldwin, 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

30th day of November, 1970

Janet Wright

Claire A. Draves

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EDWARD GREENE	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1964	:	

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The taxpayer having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency under date of July 31, 1967 of unincorporated business tax imposed by Article 23 of the Tax Law for the year 1964 and a hearing having been duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue in this case is whether taxpayer was exempt from the unincorporated business tax by reason of being an employee. The computation of the deficiency otherwise due is not in dispute. Although Mr. Greene occasionally sold insurance for other companies his income from these "sidelines" alone was too small to incur a tax.
2. The deficiency in issue is for \$554.59 plus interest.
3. Edward Greene is a career life insurance soliciting agent for the A. W. Schmidt Agency, 1575 Lexington Avenue, New York City General Agent for the New England Mutual Life Insurance Company. He has no assigned territory.
4. Mr. Greene operates under the name of Edward A. Greene Company. That name is on file with the County Clerks of Nassau and New York Counties. This company has a general life insurance brokers license from the State Insurance Department. The rent for an office,

in Hempstead, and payment for secretarial services there were paid for by checks drawn on an account in the name of Edward A. Greene Company.

5. Amounts are withheld from Mr. Greene's commissions for Social Security tax but not for income tax withholding. Mr. Greene is covered by the companies qualified pension plan and group major medical and hospitalization programs which are available to full time employees and career agents.

6. Mr. Greene would make weekly reports and would keep an appointment book.

7. New England Mutual Life Insurance Company has three forms of contract with insurance solicitors. All three provide the same first year commissions on all but pension service policies. The three contracts are as follows:

(a) The "Brokerage and Surplus Line Agreement" provided that renewal commissions shall be earned from the second through tenth years and shall be fully vested. (b) The "Agents" contract provides the same vested renewal commissions as the brokers contract and in addition "service fees" on renewals in subsequent years. This type of contract is contingent, however, upon the agents productivity - generally \$50,000 of new business a year - or length of service - 20 years. (c) The "agents career" contract provides for vested renewal commissions for only the second through fifth years. For the sixth through tenth years the commissions are non-vested and are less than those provided under other contracts. For later years, however, service fees are provided and they are twice as high as under the agents contract. To qualify for this contract the agent must generally produce on the average of \$150,000 of new business a year or be with the company 15 years. Mr. Greene sold under the agents career contract.

8. The New England Mutual Insurance Company has the right to take all business produced by Mr. Greene. Mr. Greene could not place business with other companies without its approval. The general agent received no commission on the placement of business with other companies. Mr. Green would have the status of a broker with

respect to this sideline business.

9. A career agent is provided with office space and secretarial service in proportion to his productivity. These are either provided directly by the general agent or else the career agent is reimbursed for his own outlays. The career agent can provide himself with more office space and secretarial service but only at his own cost. In any event the career agent may choose or hire his own secretary. Mr. Greene's productivity was high enough so that he paid little or nothing for office space and secretarial service during 1964.

11. Mr. Greene enrolled in and paid for academic courses in estate planning. He secured and paid for legal services in connection with individual problems of estate planning which came up in his daily work.

12. Mr. Greene used space at his home for insurance work. He consulted with clients there and stored files there.

13. Mr. Greene occupied office space in Hempstead, New York during all or part of the taxable year in question.

14. Mr. Greene incurred advertising expenses of over \$700 in 1964 in conjunction with "cooperative ads" in magazines and journals. These ads sometime would mention both his name and a life insurance companies' name and sometimes only his name alone. He occasionally advertised for business to be placed with other insurance companies and such ads would be in only his own name.

Upon the foregoing findings and all the evidence in the case

The State Tax Commission hereby

DECIDES:

A. The taxpayer has not sustained the burden of proof that he is an employee and is therefore subject to unincorporated business tax.

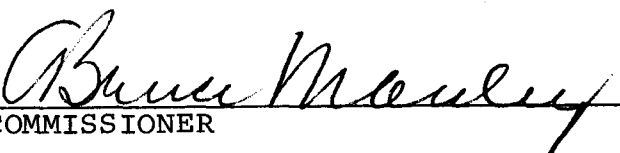
B. The petition is denied and the deficiency as stated in paragraph 2 is affirmed in full together with such interest, if any,

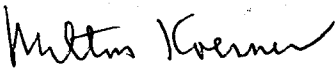
as may be due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York  
November 27, 1970

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER