

STATE OF NEW YORK
STATE TAX COMMISSION

13 T
Schwartz, Michael
1970

In the Matter of the Petition

of

MICHAEL A. SCHWARTZ

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) 1960 and 1961:

State of New York
County of Albany

Joyce S. Van Patten , 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 9th day of July , 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip

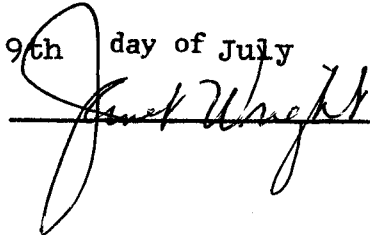
Kaplan & Co., CPA's (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Philip Kaplan & Co., CPA's
106 Seventh Street
Garden City, New York 11530

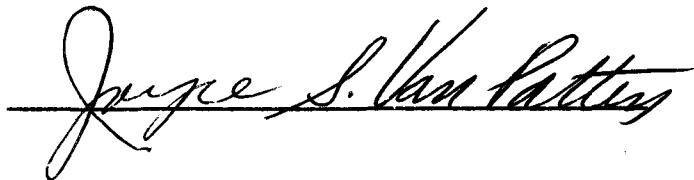
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

9th day of July , 1970.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL A. SCHWARTZ

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) 1960 and 1961:

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

State of New York
County of Albany

Joyce S. Van Patten , 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 9th day of July , 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Michael A.

Schwartz (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Michael A. Schwartz
65 East 76th Street
New York, New York 10021

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

9th day of July , 1970.

James Wright

Joyce S. Van Patten

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL A. SCHWARTZ : DECISION
for Redetermination of Deficiency :
or for Refund of Unincorporated :
Business Taxes under Article 23 :
of the Tax Law for the years 1960 :
and 1961 :

FINDINGS OF FACT

2. Michael A. & Muriel Schwartz filed joint New York State Income Tax Resident Returns for the years 1960 and 1961. Attached to said returns were withholding tax statements indicating that a portion of the reported income represented wages received by Michael A. Schwartz from Leon Rosenblatt, Inc. No unincorporated

business tax returns were filed by Michael A. Schwartz for the aforementioned years.

3. On February 8, 1965, a statement of audit changes and a notice of deficiency were issued by the Department of Taxation and Finance under file numbered 1-3427715 for the years 1960 and 1961 in the amount of \$1826.61 . The deficiency was based on the finding that the business activities of the petitioner constituted the carrying on of an unincorporated business so as to subject his total income for said years to the unincorporated business tax.

4. During the years 1960 and 1961, the taxpayer was actively engaged in the sale of general insurance with Leon Rosenblatt, Inc. and, in addition, was an agent of Connecticut Mutual Life Insurance Co. and the Massachusetts Life Insurance Co., for the sale of life insurance on a commission basis. Taxpayer did not use the offices of either of these two insurance companies. In addition to the taxpayer, there were three other individuals connected with Leon Rosenblatt, Inc. who also sold life insurance for Connecticut Mutual on a commission basis. All the commissions of these four individuals were deposited in a separate bank account. At the end of the year these monies were divided, and each individual listed his share as commissions on his tax return. Taxpayer's commissions amounted to \$12,888.35 in 1960 and \$15,872.25 in 1961. The corporation (Leon Rosenblatt, Inc.) never received these commissions nor included the same as income on their books. The method of reporting the commissions received for purposes of Article 22 clearly indicates that he was not considered an employee. All his activities were carried on from one office in Leon Rosenblatt, Inc.

5. There were no written contracts submitted in evidence between the insurance companies and the taxpayer or between the taxpayer and Leon Rosenblatt, Inc. concerning the division and

extent of time involved in the sale of insurance and duties for the corporation.

6. Taxpayer was reimbursed by Leon Rosenblatt, Inc. for expenses incurred only for local travel and not for out-of-town trips.

7. State and Federal Income Taxes were withheld from taxpayer's income by Leon Rosenblatt, Inc. and social security taxes were paid by the Leon Rosenblatt, Inc.

8. Taxpayer's activities as a salesman of general insurance and as a salesman of life insurance are the same.

9. Taxpayer's time and effort on all his activities are so intermingled that division thereof is impossible.

10. Taxpayer failed to substantiate that the income received from the corporation reported as salaries was actually compensation for services rendered exclusively to Leon Rosenblatt, Inc. The taxpayer was the Secretary, Treasurer and Director of this corporation for the years in question indicating that he was not subject to any supervision over his time and effort used for the corporation as would any regular employee.

DECISION

A. The business activities of the petitioner during the years 1960 and 1961 constitute the carrying on of an unincorporated business as an independent agent, and the income derived therefrom is subject to the unincorporated business tax.

B. The income received from the Leon Rosenblatt, Inc. of \$15,000.00 in 1960 and \$18,000.00 in 1961 were so intermingled and connected with his activities as an independent agent so as to constitute unincorporated business income.

C. The notice of deficiency is sustained and the petition is denied.

DATED: Albany, New York

STATE TAX COMMISSION

July 7, 1970


Norman Gallman
PRESIDENT

Bruce Masley
COMMISSIONER

Milton Korman
COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12226



REASON CHECKED
 Maintained _____
 Addressee unknown _____
 Inefficient Address _____
 No such street _____ number _____
 No such office in state _____
 Do not remail in this envelope _____

Mr. Michael A. Schwartz
 65 East 76th Street
 New York, New York 10021

Michael Schwartz

CERTIFIED

No 237634

MAIL

LAW BUREAU

To Mr. Newman:

Is signed for this

EB Witamberski

2/29/70

M-75 (3-68)

From E. H. Best, Counsel



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED:

Hearing Officer

July 9, 1970

Mr. Michael A. Schwartz
65 East 76th Street
New York, New York 10021

RE: DECISION

Dear Sir:

Please take notice of the decision of the
State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section 690 of the Tax Law any proceeding in court to
review an adverse decision must be commenced within
four months after the date of this notice.

Any inquiries concerning the computation of
tax due or refund allowed in accordance with this
decision or concerning any other matter relating thereto
may be addressed to the undersigned. These will be re-
ferred to the proper party for reply.

Very truly yours,

Lawrence A. Newman

Hearing Officer
LAWRENCE A. NEWMAN

cc- Law Bureau

AD-1.11 (2/70)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

MICHAEL A. SCHWARTZ : DECISION

for Redetermination of Deficiency :

or for Refund of Unincorporated

Business Taxes under Article 23 :

of the Tax Law for the years 1960

and 1961 :

Michael A. Schwartz petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960 and 1961. A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 17, 1966. The petitioner appeared and testified and was represented by Seymour Gross, CPA of Philip Kaplin & Co., CPA's.

FINDINGS OF FACT

1. The issue involved is whether or not the business activities of the taxpayer, as a life insurance broker, constitute the carrying on of an unincorporated business and whether the income received from the Leon Rosenblatt, Inc. of \$15,000.00 in 1960 and \$18,000.00 in 1961, reported as compensation for personal income tax purposes is, likewise, to be considered as business income subject to unincorporated business taxes in accordance with Section 703 of the Tax Law.

2. Michael A. & Muriel Schwartz filed joint New York State Income Tax Resident Returns for the years 1960 and 1961. Attached to said returns were withholding tax statements indicating that a portion of the reported income represented wages received by Michael A. Schwartz from Leon Rosenblatt, Inc. No unincorporated

business tax returns were filed by Michael A. Schwartz for the aforementioned years.

3. On February 8, 1965, a statement of audit changes and a notice of deficiency were issued by the Department of Taxation and Finance under file numbered 1-3427715 for the years 1960 and 1961 in the amount of \$1826.61 . The deficiency was based on the finding that the business activities of the petitioner constituted the carrying on of an unincorporated business so as to subject his total income for said years to the unincorporated business tax.

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DECISION

A. The business activities of the petitioner during the years 1960 and 1961 constitute the carrying on of an unincorporated business as an independent agent, and the income derived therefrom is subject to the unincorporated business tax.

B. The income received from the Leon Rosenblatt, Inc. of \$15,000.00 in 1960 and \$18,000.00 in 1961 were so intermingled and connected with his activities as an independent agent so as to constitute unincorporated business income.

- 4 -

C. The notice of deficiency is sustained and the petition is denied.

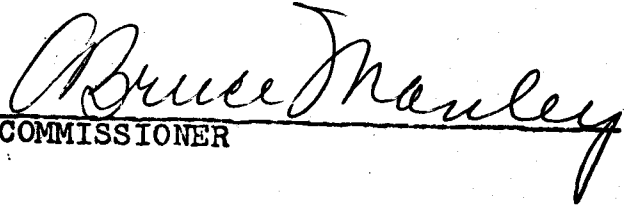
DATED: Albany, New York

STATE TAX COMMISSION

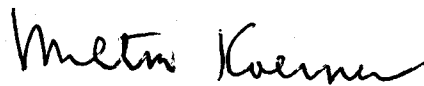
July 7, 1970



PRESIDENT



COMMISSIONER



COMMISSIONER