HEARING UNIT - File Copy

TAX Unincorporated Business Tax

ART. 23 SECS. 703

KEY WORDS

Independent Insurance Agent - not employee

CROSS REFS.

CASE LAW CITATIONS

REMARKS

STATE OF NEW YORK

STATE TAX COMMISSION

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

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 1961, 1962 and 1963 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 $87.94, $[illegible] 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 office.

(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.	[illegible]	[illegible]	[illegible]
John Hancock Life Ins. Co.	[illegible]	311	[illegible]
Aetna Life Ins. Co.	[illegible]	[illegible]	0
Conn. General Life Ins. Co.	[illegible]	[illegible]	[illegible]
Mass. Mutual Life Ins. Co.	0	0	[illegible]
Mass. Indemnity & Life Ins. Co.	0	0	[illegible]
Aetna Casualty & Surety Co.	2,187	[illegible]	[illegible]
U. S. Fidelity & Guaranty Co.	1,916	[illegible]	[illegible]

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. [illegible] 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

JOSEPH H. MURPHY

PRESIDENT

/S/

A. BRUCE MANLEY

COMMISSIONER

MILTON KOERNER

COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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

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 $87.94, $216.86 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,[illegible]	$11,[illegible]	$[illegible]
John Hancock Life Ins. Co.	1,[illegible]	111	[illegible]
Aetna Life Ins. Co.	[illegible]	[illegible]	[illegible]
Conn. General Life Ins. Co.	[illegible]	[illegible]	[illegible]
Mass. Mutual Life Ins. Co.	0	0	[illegible]
Mass. Indemnity & Life Ins. Co.	0	0	[illegible]
Aetna Casualty & Surety Co.	2,157	1,[illegible]	2,[illegible]
U. S. Fidelity & Guaranty Co.	1,910	1,[illegible]	2,[illegible]

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

JOSEPH H. MURPHY

PRESIDENT

/S/

A. BRUCE MANLEY

COMMISSIONER

MILTON KOERNER

COMMISSIONER