

*Cole, Allen O.*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
Allen O. Cole

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

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 4th day of January, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Allen O. Cole

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Allen O. Cole  
151 William Street  
New York, New York 10038

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

4th day of January, 1971.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
Allen O. Cole

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

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 4th day of Januray , 1971 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon David S. Levine

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: David S. Levine  
261 Broadway  
New York, New York 10007

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

4th day of January , 1971.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
ALLEN O. COLE  
for a Redetermination of a Deficiency  
or for Refund of Unincorporated Busi-  
ness Taxes under Article 23 of the Tax  
Law for the years 1961, 1962, and 1963

DECISION

Petitioner's claims for refund of unincorporated business taxes for the years 1961, 1962, and 1963 were denied; and petitioner filed a petition for a hearing. The hearing was held on November 11, 1969 at the offices of the State Tax Commission, New York, New York. David S. Levine, C.P.A., appeared for the taxpayer. The Income Tax Bureau was represented by Edward H. Best, Esq.. (Alexander Weiss, Esq. of counsel).

FINDINGS OF FACT

1. Petitioner filed claims for refunds of unincorporated business taxes for the years 1961, 1962, and 1963.
2. Petitioner claimed he was an employee of an insurance company and that he was not operating an unincorporated business.
3. Petitioner was a regular full-time life insurance agent for the Aetna Life Insurance Co. He was provided with an office and furniture by the company and furnished stenographic assistance and telephone facilities. He was also furnished stationery and calling cards by the company.
4. Petitioner was under the jurisdiction of a general agent of the Aetna Life Insurance Company. All his life insurance business was processed through the general agency. He was under its jurisdiction and administration.
5. Petitioner worked in a designated territory.
6. Petitioner was forbidden from placing insurance with another company without the consent of the Aetna Company.

7. Petitioner was subject to general and particular supervision and was assigned a quota in accordance with the requirements of the Aetna Company's production standards.

8. Petitioner was in daily attendance at work and was told how to use his time; and, in many instances, the company even sent along technical help.

9. Petitioner was required to attend insurance meetings, sales meetings and received all instructions from the Aetna Company or general agency.

10. Petitioner was subject to Social Security withholding.

11. Petitioner was covered by a pension plan which Aetna provided for its employees. Petitioner was also covered by group hospitalization plan which Aetna made available to its salesmen and to which there was partial contribution.

12. Petitioner also had casualty insurance business. The casualty insurance business was not operated by petitioner as an employee. The casualty business was subject to unincorporated business taxes.

13. Petitioner had receipts as follows:

	<u>Aetna Life Ins. Co.</u>	<u>Casualty Ins. Companies</u>	<u>Total Receipts</u>
1961	\$12,459.16	\$24,984.32	\$37,443.48
1962	23,930.18	24,991.43	48,921.61
1963	23,039.60	21,677.06	44,716.66

14. Petitioner's total expenses on IT-202 were applicable to the production of his total receipts and income.

15. Petitioner's allowable expenses for each year were:

1961 Expenses	\$13,069.21
Federal Change	<u>-2,260.06</u>
1961 Expense	\$10,809.15
1962 Expense	\$15,667.77
1963 Expense	\$15,626.09

16. Petitioner was an employee of the Aetna Life Insurance Company, and his income therefrom was not from the operation of an unincorporated business.

17. Petitioner's income from Casualty commissions was income from the operation of an unincorporated business.

18. Petitioner's deductible expenses for unincorporated business tax purposes were:

<u>1961</u>	$\frac{\$24,984}{37,443}$	x	\$10.809	=	\$7212.35
<u>1962</u>	$\frac{\$24,991}{48,921}$	x	\$15.667	=	\$8003.39
<u>1963</u>	$\frac{\$21,677}{44,716}$	x	\$15.626	=	\$7575.02

DECISION

A. The petitioner's claims for refunds are denied in part and granted in part.

B. The petitioner is entitled to the following refunds and interest pursuant to Section 688 a (2) of the Tax Law:

1961 Refund	\$	<u>205.02</u>
Interest from April 15, 1962 to date of refund		
1962 Refund	\$	<u>574.01</u>
Interest from April 15, 1963 to date of refund		
1963 Refund	\$	<u>494.84</u>
Interest from April 15, 1964 to date of refund		

DATED: Albany, New York  
December 31, 1970

STATE TAX COMMISSION

Norman Gallman  
COMMISSIONER

Burt W. H. H. H.  
COMMISSIONER

Milton Koenig  
COMMISSIONER