

STATE OF NEW YORK  
STATE TAX COMMISSION

*Silver Henry F.*  
*Sub 23 U.B.T.*

In the Matter of the Petition

of

Henry F. Silver

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

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

State of New York  
County of Albany

Martha Funaro , 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 18th day of March , 1971 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Henry F.

Silver (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Henry F. Silver  
263 Kelburne Avenue  
North Tarrytown, 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

18th day of March , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Henry F. Silver

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

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

State of New York  
County of Albany

Martha Funaro , 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 18th day of March , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Paul H. Kirstein, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Paul H. Kirstein, C.P.A.  
c/o Kirstein & Davis  
101 Park Avenue  
New York, New York 10017  
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

18th day of March , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HENRY F. SILVER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1963.	:	

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Petitioner, Henry F. Silver, has filed a petition for re-determination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1963. (File No. 3-7156086). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 21, 1971 at 2:45 P.M. Kirstein & Davis, C.P.A.'s by Paul H. Kirstein appeared for petitioner. Edward H. Best, Esq., (Albert Rossi, Esq. of Counsel) appeared for the Income Tax Bureau.

FINDINGS OF FACT

1. Petitioner, Henry F. Silver, filed a New York State income tax resident return for the year 1963. He did not file a New York State unincorporated business tax return for said year.

2. On May 1, 1967 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Henry F. Silver, imposing unincorporated business tax upon the income received by him from his activities as an insurance salesman during the year 1963 upon the grounds that said activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a Notice of Deficiency in the sum of \$622.25.

3. During the year 1963, petitioner, Henry F. Silver, was a life insurance sales agent for New England Mutual Life Insurance Company pursuant to a written agreement with the general agent.

The general agent withheld social security tax but did not withhold Federal or New York State income taxes from the commissions paid to him. The general agent did not cover him for workmen's compensation or unemployment insurance. He was a member of the company pension plan. He was under a moral, but not a legal, obligation to first offer all of his life insurance business to the company. He was free to determine for himself the time, place, and manner for the solicitation of applications for policies. There was no direction or control of his activities by the general agent of the company, other than requiring him to attend sales meetings.

4. During the year 1963, petitioner, Henry F. Silver, received from New England Mutual Life Insurance Company commissions for the sale of life insurance policies totaling \$33,499.55. He also received from other insurance companies commissions for the sale of life and accident and health insurance policies totaling \$15,111.36.

5. During the year 1963, petitioner, Henry F. Silver, was housed in the office of the general agent. The general agent furnished him with stationary, a telephone and secretarial services. He was charged approximately \$18,000.00 by the general agent for the use of said office and clerical services. He was allowed as a credit against said charges a sum equal to 20% of the first year premiums on life insurance placed with New England Mutual Life Insurance Company. During said year he received a credit of \$7,947.89.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Henry F. Silver, during the year 1963 from New England Mutual Life Insurance Company and the other insurance companies with whom he placed insurance constituted receipts from his regular business as an insurance salesman and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Henry F. Silver, during the year 1963, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Henry F. Silver is denied and the Notice of Deficiency issued May 1, 1967, is sustained.

DATED: Albany, New York  
*March 16, 1971*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER