

STATE OF NEW YORK
STATE TAX COMMISSION

*Sullivan Art.
O. B. T.*

In the Matter of the Petition

of

ARTHUR L. SULLIVAN

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

Rae Zimmerman , 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 26th day of August , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Arthur L.

Sullivan (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Arthur L. Sullivan
8 Barstow Road
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

26th day of August , 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ARTHUR L. SULLIVAN

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

Rae Zimmerman, 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 26th day of August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Max Doktofsky, 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: Max Doktofsky, C.P.A.
Perlick & Doktofsky
305 Northern Blvd.
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

26th day of August, 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARTHUR L. SULLIVAN	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Year 1963.	:	

Petitioner, Arthur L. Sullivan, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1963. (File No. 3-3430094). 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 May 18, 1971, at 10:30 A.M. Perlick & Doktofsky, by Max Doktofsky, C.P.A. appeared for petitioner. Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUE

I. Were the services rendered by petitioner, Arthur L. Sullivan, during the year 1963, as an officer of Pension & Welfare Consultants, Inc. so interrelated and integrated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, Arthur L. Sullivan, 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 March 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Arthur L. Sullivan, imposing unincorporated business tax for the year 1963 upon his net business income as an insurance agent and upon his salary income received from Pension & Welfare Consultants, Inc., and accordingly issued a Notice of Deficiency in the sum of \$1,292.68.

3. Petitioner, Arthur L. Sullivan, conceded at the formal hearing that his net business income for the year 1963 from his activities as an insurance agent, in the sum of \$28,153.50 was subject to the New York State unincorporated business tax.

4. During the year 1963, petitioner, Arthur L. Sullivan, was a general agent for Fidelity Mutual Life Insurance Company. As a general agent he received override commissions on life insurance policies written by brokers in the New York metropolitan area. He also sold life insurance as a life insurance agent for Fidelity Mutual Life Insurance Company. He was compensated on a commission basis by the company. His net business income for said year, exclusive of salary received from Pension & Welfare Consultants, Inc., was \$28,153.50.

5. During the year 1963, petitioner, Arthur L. Sullivan, was also president and the sole stockholder of Pension & Welfare Consultants, Inc., a New York corporation subject to the corporation franchise tax under Article 9-A of the Tax Law. During said year, he received a salary of \$10,775.00 from the corporation. Federal and New York State income taxes and social security tax were withheld

from the salary paid to him. He reflected this income as wages on his New York State income tax return.

6. During the year 1963, Pension & Welfare Consultants, Inc. was engaged in the business of serving as a pension and insurance consultant to various manufacturing, wholesale and retail organizations, primarily in the shoe industry. The corporation operated from the same office as individual proprietorship. The corporation maintained its own employees, books and records, bank accounts, and telephone directory listing.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Arthur L. Sullivan, during the year 1963, as an officer of Pension & Welfare Consultants, Inc. were not so integrated and interrelated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him and therefore the salary received by him as an officer of said corporation was 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, Arthur L. Sullivan, during the year 1963 did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Arthur L. Sullivan is granted to the extent of reducing taxable business income for the year 1963 from \$28,928.50 to \$18,153.50 and of reducing unincorporated business tax

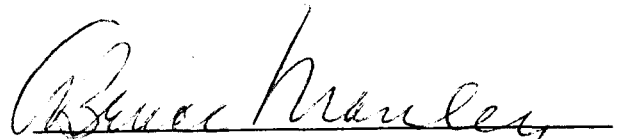
due from \$1,157.14 to \$726.14, and the Notice of Deficiency issued March 28, 1966, is reduced from \$1,292.68 to \$808.20 together with such interest as may be lawfully due from March 28, 1966, and, except as so granted, the petition is in all other respects denied.

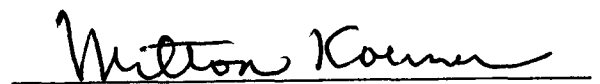
DATED: Albany, New York

August 26, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER