

STATE OF NEW YORK
STATE TAX COMMISSION

Todorovich, Boris
U.S.T. Act 2-3

In the Matter of the Petition

of

BORIS TODOROVICH

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) 1965, 1966 & 1967

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 2nd day of December , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Boris Todorovich

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

wrapper addressed as follows: Boris Todorovich
745 Fifth Avenue
New York, New York 10022

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

2nd day of December , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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BORIS TODOROVICH

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a Refund of Unincorporated Business;
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Tax Law for the (Year(s) 1965, 1966 & 1967

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 2nd day of December , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Harvey M.
Lifset (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harvey M. Lifset
90 State Street
Albany, New York 12207

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

2nd day of December , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BORIS J. TODOROVICH : DECISION
for Redetermination of Deficiency or for :
Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1965, 1966 and 1967. :

Petitioner, Boris J. Todorovich, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 74850467). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on September 1, 1971, at 10:00 A.M. Petitioner appeared by Harvey M. Lifset, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Did petitioner, Boris J. Todorovich's activities as a life insurance salesman during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Boris J. Todorovich, and his wife filed New York State income tax resident returns for the years 1965, 1966 and 1967. He listed his occupation as "insurance agent and broker" on said returns. He did not file New York State unincorporated business tax returns for said years.

2. On July 27, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Boris J. Todorovich, imposing unincorporated business tax upon the income received by him from

his activities as an insurance salesman during the years 1965, 1966 and 1967. It also made adjustments to conform with the federal audit of his income tax returns for the years 1965 and 1966, which adjustments are not being contested by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$6,200.31.

3. During the years 1965, 1966 and 1967, petitioner, Boris J. Todorovich, was a life insurance sales agent for Provident Mutual Life Insurance Company pursuant to a written agreement with Roland D. Benscoter, one of the company's general agents. The general agent was located in Detroit, Michigan. The general agent was not licensed to conduct an insurance business in New York. Petitioner, Boris J. Todorovich, was licensed to write insurance in New York. The general agent withheld social security tax but did not withhold Federal or New York State income taxes from the commissions paid to him. He was eligible to become a member of the company pension plan, but he elected not to join it. He had an oral understanding with the general agent that he would first offer all of his life insurance business to Provident Mutual Life Insurance Company. If the risk was declined by it he could then place the insurance with another company. He was assigned quotas by the general agent. He sent weekly reports to the general agent. The general agent provided him with sales aids. He, on occasion, attended meetings at the office of the general agent in Detroit. Several times a year, a representative of the general agent would visit his office in New York. His vacation time had to be cleared with the general agent. There was no other direction or control over his sales activities by the general agent other than above stated.

4. Petitioner, Boris J. Todorovich, received the following commission income during the years 1965, 1966 and 1967:

	<u>1965</u>	<u>1966</u>	<u>1967</u>
Provident Mutual- Benscoter Agency	\$57,710.90	\$67,403.35	\$61,185.16
Provident Mutual- Tunmore Agency	1,747.93	1,777.78	1,391.45
Harris & Sloan- General Insurance	842.63	787.43	1,805.13
Guardian Life	748.74	958.07	379.44
U.S. Life	174.61	_____	_____
Miscellaneous	748.44	846.09	768.22

5. During the years 1965, 1966 and 1967, petitioner, Boris J. Todorovich, maintained a two room office at 745 Fifth Avenue in New York City. The lease was in his name. The general agent agreed to pay the rent for the balance of the lease in the event of his death or disability. The office was furnished by the general agent. Petitioner, Boris J. Todorovich, paid the expenses for rent, stationary, office supplies, telephone, postage, entertainment of clients and fire and liability insurance. The general agent paid the salaries of the two secretaries in his office. Their compensation totaled \$5,672.07 in 1965, \$5,195.23 in 1966 and \$6,496.53 in 1967. He received an expense allowance from the general agent based upon a formula of \$4.00 per thousand of ordinary life insurance written and \$1.00 per thousand of term life insurance written. The cost of the two secretaries was charged against the expense allowance by the general agent. During the years 1965 and 1966, he had a sub-tenant who occupied a portion of the office. He was listed in the phone book as "J. Todorovich, Ins." He was not listed under the company listing. He hired and fired the secretaries subject to the approval of the general agent. He personally paid them a bonus at the end of each year. He used the letterhead of Provident Mutual Life Insurance Company.

6. Petitioner, Boris J. Todorovich's rent and office expenses totaled \$7,103.76 in 1965, \$10,709.79 in 1966 and \$10,306.70 in 1967. His cash reimbursements for expenses from the general agent totaled \$4,857.01 in 1965, \$7,722.76 in 1966 and \$7,537.67 in 1967. This reimbursement did not include the cost of secretarial expense which had been paid by the general agent and deducted from his expense allowance account.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Boris J. Todorovich, during the years 1965, 1966 and 1967 from Provident 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, Boris J. Todorovich, during the years 1965, 1966 and 1967 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Boris J. Todorovich is denied and the Notice of Deficiency issued July 27, 1970 is sustained.

DATED: Albany, New York
December 2, 1971

STATE TAX COMMISSION

Norman J. Gellman
COMMISSIONER

James M. Mauley
COMMISSIONER

Milton Korman
COMMISSIONER