

STATE OF NEW YORK
STATE TAX COMMISSION

Zobler, Estate of
Morley
U. B. #
1971

In the Matter of the Petition
of
Estate of Morley Zobler
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

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 21st day of April , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon the Estate of Morley Zobler (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Estate of Morley Zobler
c/o Anna Zobler
47 Winchester Drive
Manhasset, 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

21st day of April , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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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 21st day of April , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Irving Schlitt, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Irving Schlitt, Esq.
22 West 21 Street
New York, New York 10010
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

21st day of April , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATE OF MORLEY ZOBLER	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Busi-	:	
ness Taxes under Article 23 of the Tax	:	
Law for the year 1965.	:	

The executrix of the estate of Morley Zobler petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1965. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York, on September 24, 1970. The estate appeared through Irving Schlitt, Esq. and the Income Tax Bureau appeared through Edward H. Best, Esq., (Solomon Sies, Esq. of Counsel).

FINDINGS OF FACT

1. The issue in this matter is whether the activities of the decedent taxpayer as a life insurance agent constitute the carrying on of an unincorporated business.
2. The decedent taxpayer, during the year in question, was employed as a field underwriter by the Home Life Insurance Company. Taxpayer was paid under a salary plan based upon a production average. Withholding tax, unemployment insurance and Social Security were deducted from the taxpayer's pay and the company provided the taxpayer with Workmen's Compensation and disability benefits. The taxpayer also participated in the company pension plan.
3. The taxpayer was provided an office by the company and did not pay for rent, telephone or clerical services. Taxpayer was not reimbursed for business expenses incurred in connection with his business.

4. The Home Life Insurance Company permitted the taxpayer to place business with other companies in situations where Home Life would not handle such business.

5. The taxpayer maintained an office in his home for which he claimed a deduction of \$480.00 as a business expense. In addition, the taxpayer, for the year in question, deducted as a business expense commissions paid in the amount of \$3,739.00.

6. During the tax year 1965, the taxpayer received income from the Home Life Insurance Company in the amount of \$28,137.00. Commissions received by the taxpayer from other insurance companies amounted to \$13,404.00.

7. On May 20, 1968, notice of deficiency # 38374914 was issued against the taxpayer in the amount of \$942.34 plus interest. This deficiency was based upon a determination that the taxpayer's activities as a soliciting life insurance agent constituted the carrying on of an unincorporated business, the proceeds of which are subject to unincorporated business tax.

DECISION

A. The taxpayer is an employee of the Home Life Insurance Company within the meaning of section 703 (b) of the Tax Law with respect to his commissions from that company.

B. The taxpayer is an independent agent and subject to Article 23 of the Tax Law with respect to commissions received from other companies.

C. Commissions received from other companies for the tax year 1965 were insufficient to require the payment of unincorporated business tax under Article 23 of the Tax Law.

D. The determination of deficiency File No. 38374914 for the year 1965 is incorrect and is cancelled in full.

DATED: Albany, New York

April 21, 1971

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Alfred M. M. M. M.
COMMISSIONER

Milton Koerner
COMMISSIONER