STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EARL ADLER

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

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 3rd day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Earl Adler (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Earl Adler
144 Rock Creek Lane
Scarsdale, 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
3rd day of April, 1972.

Martha Funaro

Carl Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EARL ADLER

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

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 3rd day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Herbert Granoff, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Herbert Granoff, Esq.
50 Broadway
New York, 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
3rd day of April, 1972.

Martha Funaro

Kai Zimmerman

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 3, 1972

Earl Adler
144 Rock Creek Lane
Scarsdale, New York

Dear Mr. Adler:

Please take notice of the DECISION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 722 of the Tax Law any proceeding in court to review an adverse decision must be commenced within 4 Months after the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

AD-1.12 (7/70)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EARL ADLER	:	DECISION
for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1961 and 1962.	:	

The taxpayer having filed a petition pursuant to Section 689 of the Tax Law for the redetermination of a deficiency in unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1961 and 1962 and a hearing having been duly held on June 22, 1970 at the offices of the State Tax Commission, New York, New York, before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether petitioner who is engaged in the selling of life insurance and mutual funds, is exempt from tax either as an employee under Tax Law Section 703(b) or as a sales representative under Tax Law Section 703(f).

2. The deficiencies asserted are in the amounts of $1,392.91 for 1961 and $909.66 for 1962 both with interest.

3. Taxpayer was in the business of life insurance and mutual fund sales. In 1961, he was 29 years old and had been in the business for 2 years. He worked in association with Bernard Bergan, who had 30 years experience in insurance. In April of 1962, he left this association to become an employee of Weinschel Co., Inc.

4. The deficiencies are based upon the amount of income reported each year on Schedule C of the Federal return and on certain amounts shown as salary on the Federal return. The amounts on

Schedule C were from the following sources: The Bernard Bergan Agency, Designed Program, Inc., Earl Adler, Inc. and other sources. The salaries were from the Bernard Bergan Agency and from Earl Adler, Inc.

5. Bernard Bergan was general agent for Mutual Trust Life Insurance Co. and later, for the U.S. Life Insurance Co. The agency employed about 25 people. Sales were made through about 240 independent full time agents and brokers. Taxpayer solicited life insurance and annuity sales for the Bernard Bergan Agency, Inc. He received a salesman's commission on each sale. Taxpayer had a separate contract with the Bergan Agency, whereby he was to engage in the recruiting, training and supervision of life insurance agents and brokers. His compensation for these duties was a small salary, plus 20% of the first year premiums produced by those he supervised. The contract provides that such recruiting, training and supervising shall be done "in the specific manner" prescribed by the Bergan Agency. Taxpayer agreed further that all sales directly solicited by himself would be placed through the Bergan Agency.

6. The taxpayer and Bernard Bergan each owned half of the shares in Designed Programs Inc., whose business was the sale of mutual funds. Mr. Bergan was President and taxpayer was Vice-President. Taxpayer was employed as manager with an overriding commission, which was designed to leave 2% of the total commissions for the corporation. His duties here were the same as his duties with the Bergan Agency.

7. Taxpayer owned an interest in Programmed Economics Inc. He wrote insurance as its sublicensee and it would place the business with the Bergan Agency. It was set up to provide perpetual renewal commissions to taxpayer. This corporation filed New York Franchise tax returns. Taxpayer received $5,762.59 from this source in 1961 and nothing in 1962.

8. Taxpayer was the sole shareholder in Earl Adler, Inc. Its income was commissions on insurance solicited by taxpayer and all income was paid over to taxpayer. Such income was none in 1961 and $2,976.54 in 1962.

9. Taxpayer in 1961 received income of $5,948.73 from the Bergan Agency and $721.80 and $880.44 from others, all as his share of insurance commissions for the solicitation of policies on which he participated directly. All such business was placed through the Bergan Agency.

10. The Bernard Bergan Agency withheld social security and income tax from the fixed salary of taxpayer but not from his commissions.

The amounts reported on Federal Schedule C (profit from business or profession) were also reported on Federal Schedule C-3 (computation of social security self-employment) although no additional social security tax was due on these sums.

11. The Bergan Agency provided all office space and secretarial help for taxpayer. Designed Programs, Inc., Programmed Economics, Inc., and Earl Adler, Inc. had their offices in the same office as the Bergan Agency.

12. The taxpayer took as deductions on Schedule C of his Federal income tax return amounts for rent on business property, legal fees, auto expenses, convention and travel expenses, books and dues expenses, and amounts representing commissions paid to agents who shared in the solicitation of policies. The amounts of commissions deducted were $22,954.21 for 1961 and $13,004.70 for 1962. The taxpayer did not offer evidence of an allocation of these expenses between his various sources of income.

Upon the foregoing findings and all the evidence in the case The State Tax Commission hereby

DECIDES:

A. The amounts received as salaries and as overriding commissions from the Bernard Bergan Agency and Designed Programs, Inc.

totalling $55,280.11 in 1961 and $44,215.37 in 1962, were received as an employee and are not subject to tax. There is sufficient evidence to show that the corporate principles had a right to control the details of taxpayer's work.

B. The amounts received from the direct solicitation of insurance policies as found in paragraph nine and totalling $7,550.97 for 1961 and none for 1962 are received by reason of engaging in an unincorporated business. Taxpayer has not carried the burden of proof of showing that such solicitation was so incidental as not to constitute a business.

C. The amounts received as salary from Programmed Economics, Inc., and Earl Adler, Inc. totalling $5,762.59 for 1961 and $2,976.54 for 1962 were for services which constitute part of the business of direct solicitation of life insurance carried on by taxpayer.

D. Taxpayer has not carried the burden of proof of showing what deductions should be allowed against his business income.

E. The deficiencies are valid in part and erroneous in part and are recomputed to be $65.08 for 1961 and $0 for 1962, together with such interest, if any, as may be lawfully due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York
April 3, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

A. Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 3, 1972

Earl Adler
144 Rock Creek Lane
Scarsdale, New York

Dear Mr. Adler:

Please take notice of the DECISION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 722 of the Tax Law any proceeding in court to review an adverse decision must be commenced within 4 Months after the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

AD-1.12 (7/70)

AD 32 (3-71) 50M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

RETURNED TO SENDER

REASON CHECKED
Unclaimed ____ Refused ____
Addressee unknown ____
Insufficient Address ____
No such street ____ number ____
No such office in state ____
Do not remail in this envelope

MECHANICVILLE, N.Y.
APR 4 AM 1972
12118

Earl Adler

144 Rock Creek Lane

Scarsdale, New York

Moved, left no address
No such number
Moved, not forwardable
Addressee unknown

Removed
not forwardable
23 H

RECEIVED
APR 7 1972
SECRETARY

CERTIFIED
No. 592469
MAIL

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EARL ADLER	:	DECISION
for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1961 and 1962.	:	

The taxpayer having filed a petition pursuant to Section 689 of the Tax Law for the redetermination of a deficiency in unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1961 and 1962 and a hearing having been duly held on June 22, 1970 at the offices of the State Tax Commission, New York, New York, before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether petitioner who is engaged in the selling of life insurance and mutual funds, is exempt from tax either as an employee under Tax Law Section 703(b) or as a sales representative under Tax Law Section 703(f).

2. The deficiencies asserted are in the amounts of $1,392.91 for 1961 and $909.66 for 1962 both with interest.

3. Taxpayer was in the business of life insurance and mutual fund sales. In 1961, he was 29 years old and had been in the business for 2 years. He worked in association with Bernard Bergan, who had 30 years experience in insurance. In April of 1962, he left this association to become an employee of Weinschel Co., Inc.

4. The deficiencies are based upon the amount of income reported each year on Schedule C of the Federal return and on certain amounts shown as salary on the Federal return. The amounts on

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND JONES : DECISION

for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1961 and 1962.

The taxpayer having filed a petition pursuant to Section 690 of the Tax Law for the redetermination of a deficiency in unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1961 and 1962 and a hearing having been held in Room 222, 270 Broadway, the office of the State Tax Commission, New York, New York, before Hon. [illegible], Hearing Officer, and the petitioner having been duly represented and heard,

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether petitioner who is engaged in the selling of life insurance and mutual funds is exempt from tax either as an employee under Tax Law Section 703(b) or as a qualified representative under Tax Law Section 703(d).

2. The deficiencies asserted are in the amounts of $[illegible] for 1961 and $[illegible] for 1962 both with interest.

3. Taxpayer was in the business of life insurance and mutual fund sales. In 1961, he was 22 years old and had been in the business for 2 years. He worked in association with Herman Sampson, who had 10 years experience in insurance. In April of 1962, he left this association to become an employee of Weingrad Co., Inc.

4. The deficiencies are based upon the amounts of income reported each year on Schedule C of the federal return and on certain amounts shown as salary on the federal return. The amounts [illegible]

Schedule C were from the following sources: The Bernard Bergan Agency, Designed Program, Inc., Earl Adler, Inc. and other sources. The salaries were from the Bernard Bergan Agency and from Earl Adler, Inc.

5. Bernard Bergan was general agent for Mutual Trust Life Insurance Co. and later, for the U.S. Life Insurance Co. The agency employed about 25 people. Sales were made through about 240 independent full time agents and brokers. Taxpayer solicited life insurance and annuity sales for the Bernard Bergan Agency, Inc. He received a salesman's commission on each sale. Taxpayer had a separate contract with the Bergan Agency, whereby he was to engage in the recruiting, training and supervision of life insurance agents and brokers. His compensation for these duties was a small salary, plus 20% of the first year premiums produced by those he supervised. The contract provides that such recruiting, training and supervising shall be done "in the specific manner" prescribed by the Bergan Agency. Taxpayer agreed further that all sales directly solicited by himself would be placed through the Bergan Agency.

6. The taxpayer and Bernard Bergan each owned half of the shares in Designed Programs Inc., whose business was the sale of mutual funds. Mr. Bergan was President and taxpayer was Vice-President. Taxpayer was employed as manager with an overriding commission, which was designed to leave 2% of the total commissions for the corporation. His duties here were the same as his duties with the Bergan Agency.

7. Taxpayer owned an interest in Programmed Economics Inc. He wrote insurance as its sublicensee and it would place the business with the Bergan Agency. It was set up to provide perpetual renewal commissions to taxpayer. This corporation filed New York Franchise Tax returns. Taxpayer received $5,762.59 from this source in 1961 and nothing in 1962.

CONTRACTS & AGREEMENTS

Schedule A was from the following company: The Berger Agency, Insured Group, Inc., Bell Life, Inc. and other sources. The matrix was taken from Berger Agency and from Bell Life, Inc.

Berger Agency was general agent for Insured Group Life Insurance Co. and later, for the U.S. Life Insurance Co. The agency supplied about 10 people. Claims were made through the independent full time agents and brokers. Taxpayer sold life insurance and annuity policies for the Insured Group Agency, Inc. Taxpayer's relationship to each was: Taxpayer had a separate contract with the Berger Agency. Taxpayer was to engage in the recruiting, training and supervision of life insurance agents and brokers. A compensation for these duties was a small salary, plus 2% of the first year premiums received by these he supervised. The underlying provides that recruiting, training and supervision shall be done in the manner prescribed by the Berger Agency. Taxpayer agreed further that all sales directly solicited by himself would be placed through the Berger Agency.

2. The taxpayer and Insured Group Life Ins. Co. of the Arena in Oakland Taxpayer Inc., whose principal was the sale of mutual funds. Mr. Berger was President and taxpayer was Vice-President. Taxpayer was employed as manager with no formal compensation which was delivered to Berger 2% of the total commissions for the corporation. His duties here were the same as his duties with the Berger Agency.

3. Taxpayer owned an interest in Programmed Accounting Inc., a mutual insurance as the underwriter and 1-world broker the business as with the Berger Agency. It was set up to provide corporate tax commissions to taxpayer. The corporation filed New York franchise tax returns [illegible] and nothing in 1962.

8. Taxpayer was the sole shareholder in Earl Adler, Inc. Its income was commissions on insurance solicited by taxpayer and all income was paid over to taxpayer. Such income was none in 1961 and $2,976.54 in 1962.

9. Taxpayer in 1961 received income of $5,948.73 from the Bergan Agency and $721.80 and $880.44 from others, all as his share of insurance commissions for the solicitation of policies on which he participated directly. All such business was placed through the Bergan Agency.

10. The Bernard Bergan Agency withheld social security and income tax from the fixed salary of taxpayer but not from his commissions.

The amounts reported on Federal Schedule C (profit from business or profession) were also reported on Federal Schedule C-3 (computation of social security self-employment) although no additional social security tax was due on these sums.

11. The Bergan Agency provided all office space and secretarial help for taxpayer. Designed Programs, Inc., Programmed Economics, Inc., and Earl Adler, Inc. had their offices in the same office as the Bergan Agency.

12. The taxpayer took as deductions on Schedule C of his Federal income tax return amounts for rent on business property, legal fees, auto expenses, convention and travel expenses, books and dues expenses, and amounts representing commissions paid to agents who shared in the solicitation of policies. The amounts of commissions deducted were $22,954.21 for 1961 and $13,004.70 for 1962. The taxpayer did not offer evidence of an allocation of these expenses between his various sources of income.

Upon the foregoing findings and all the evidence in the case The State Tax Commission hereby

DECIDES:

A. The amounts received as salaries and as overriding commissions from the Bernard Bergan Agency and Designed Programs, Inc.

8. Taxpayer was the sole shareholder in and officer of the income was commissions on insurance collected by taxpayer and all income was paid over to taxpayer. Such income was [illegible] and reported in 1982.

9. Taxpayer in 1982 received income of $6,[illegible] from Sears Savings and $[illegible] and $[illegible] from [illegible] as the share of business [illegible] or which he participated directly. All such business was [illegible] directly.

10. The Internal Revenue Agency without notice, authority and income tax [illegible] filed returns of taxpayer for the [illegible] years.

The amounts reported on Federal Schedule C (Profit from Business or Profession) were also reported on Federal Schedule SE (Computation of Social Security Self-Employment) without [illegible] additional social security tax [illegible] on those [illegible].

11. The Illinois Department revoked all office [illegible] and corporate [illegible] for corporations [illegible] Designed Programs, Inc., Programmed Economics, Inc., and Art Fair, Inc. [illegible] offices in the same office in the Burgan Agency.

12. The taxpayer took as deductions on Schedule C of his Federal Income Tax return amounts for [illegible] in business property, legal fees, auto expense, commission and travel expenses, [illegible] and dues expense, and amounts representing commissions paid to agents who [illegible] in the solicitation of [illegible]. The amounts of commissions deducted were $[illegible] for 1981 and $[illegible] for 1982. The taxpayer did not offer evidence of any [illegible] of these expenses between his various sources of income.

Upon the foregoing findings and [illegible] conclusions [illegible] the Illinois Tax Determination Department [illegible] [illegible] [illegible].

A. The amounts received as salaries and as [illegible] commissions from the Burgan Insurance Agency and Internal Programs, Inc.

totalling $55,280.11 in 1961 and $44,215.37 in 1962, were received as an employee and are not subject to tax. There is sufficient evidence to show that the corporate principles had a right to control the details of taxpayer's work.

B. The amounts received from the direct solicitation of insurance policies as found in paragraph nine and totalling $7,550.97 for 1961 and none for 1962 are received by reason of engaging in an unincorporated business. Taxpayer has not carried the burden of proof of showing that such solicitation was so incidental as not to constitute a business.

C. The amounts received as salary from Programmed Economics, Inc., and Earl Adler, Inc. totalling $5,762.59 for 1961 and $2,976.54 for 1962 were for services which constitute part of the business of direct solicitation of life insurance carried on by taxpayer.

D. Taxpayer has not carried the burden of proof of showing what deductions should be allowed against his business income.

E. The deficiencies are valid in part and erroneous in part and are recomputed to be $65.08 for 1961 and $0 for 1962, together with such interest, if any, as may be lawfully due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York
April 3, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koch
COMMISSIONER

[illegible] 1961 and 1962 in 1963, were considered as an employee and are not subject to tax. There is sufficient evidence to show that the corporate or individual taxpayer to control the liability of the payee a work.

2. The Supreme Court's decision in the Atlanta Association of Insurance Agents case found in [illegible] and [illegible] for 1961 and 1962 are received by persons of engaging in an independent business. Taxpayer has not carried the burden of proof of showing that such solicitation was an incidental or act in connection a business.

3. The amounts received as salary from Independent Insurance and Real Estate Corporation [illegible] for 1961 and $[illegible] for 1962 were for services which constitute part of the business of Atlanta Association of Life Insurance [illegible] to be taxpayer.

4. Taxpayer has not carried the burden of proof of showing that deductions should be allowed against his business income.

5. The deductions [illegible] are not allowable [illegible] and [illegible] to be [illegible] and [illegible] for [illegible] and [illegible] for [illegible] which such business is carrying on be [illegible] by the [illegible] to [illegible] of the [illegible].

[illegible] judgment of the [illegible] is affirmed and [illegible] are [illegible]

[illegible]

[illegible]

[illegible]

[illegible]