

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT C. HEMBERGER

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) 1960 thru 1967

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

State of New York
County of Albany

Lynn Wilson , 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 6th day of April , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon ROBERT C. HEMBERGER

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Robert C. Hemberger

38 Byron Avenue
Buffalo, New York 14223

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

6th day of April , 19 72

Lynn Wilson

Martha Farrow

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT C. HEMBERGER

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
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Tax Law for the (Year(s) 1960 thru 1967

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State of New York
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Lynn Wilson, 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 6th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon RICHARD B.
DOPKINS, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Richard B. Dopkins, Esq.
1020 Liberty Bank Building
Buffalo, New York 14202

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

6th day of April, 1972

Martha F. Farnsworth

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 6, 1972

Mr. Robert C. Hemberger
38 Byron Avenue
Buffalo, New York 14223

Dear Mr. Hemberger:

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

Please take further notice that pursuant to section(s)
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,

L. Robert Leisner
L. Robert Leisner
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| ROBERT C. HEMBERGER | : | DECISION |
| for a Redetermination of a Deficiency | : | |
| or for Refund of Unincorporated Business | : | |
| Taxes under Article 23 of the Tax Law | : | |
| for the Years 1960 through 1967. | : | |

Robert C. Hemberger petitioned for a redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the years 1960 through 1967. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York on August 5, 1971.

Richard B. Dopkins, Esq., represented the taxpayer and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the activities of the taxpayer as an insurance agent during the years 1960 through 1967 subject to unincorporated business tax?

FINDINGS OF FACT

1. The taxpayer, Robert C. Hemberger, filed New York State income tax returns for the years 1960 through 1967 in which he reported income as an insurance agent, but he did not file New York State unincorporated business tax returns for those years.

2. The Income Tax Bureau issued a Notice of Deficiency for the years 1960 through 1967 under File No. 74048075 against the taxpayer asserting that the activities of the taxpayer as a general agent constituted the carrying on of an unincorporated business and the income derived therefrom was subject to the unincorporated business tax pursuant to Article 23 of the Tax Law.

3. The taxpayer petitioned for a redetermination of the deficiency and filed a demand for a hearing.

4. The taxpayer is a sales representative of the Knights of Columbus, selling life insurance policies issued by the Order to its members; the taxpayer receives commissions on sales of policies sold directly by him and by local representatives of the Knights of Columbus, whom the taxpayer supervises.

The taxpayer had a broker's license during the years in issue, but he devoted his full time to the Knights of Columbus insurance sales. The taxpayer sold some casualty insurance, but the total yearly commissions involved were not large enough to be subject to unincorporated business tax or to significantly affect his sales representation of Knights of Columbus insurance.

5. The taxpayer is designated as a general agent in his contract with the Knights of Columbus; that the taxpayer's sales territory is located in the Buffalo, New York area; the contract provided that nothing contained therein should be construed to create the relationship of employer and employee between the Knights of Columbus and the taxpayer; taxpayer's contract provided that the taxpayer shall perform his work at such times and places, and in such manner as in his judgment will best serve the interest

of the Order and its membership, and shall devote his full time and entire attention and energy to the services required under the contract and any other authorized contract with the Order, and shall not engage in any other occupation or business except as authorized by the Order; that all records and papers relating to transactions by or for the Knights of Columbus in the hands of the taxpayer remain the property of the Order.

6. Deductions were taken from the taxpayer's commissions received from the Knights of Columbus for social security taxes; the taxpayer was provided coverage for workmen's compensation insurance by the Knights of Columbus.

7. The taxpayer employed no assistants. In the early years, the taxpayer utilized space at home for desk space storage of records and later he utilized space at his father's insurance office for a rent of \$50.00 or \$60.00 a month. The taxpayer did not receive paid vacations. The taxpayer was reimbursed for his expenses connected with attendance at conferences and meetings when he was required by the Knights of Columbus to be present at them; the taxpayer was reimbursed for his other selling expenses incurred as a sales representative for the Knights of Columbus receiving one dollar per thousand of sales made by other local representatives and two dollars per thousand for sales which he made; the taxpayer's other expenses included telephone, printing, stationery, stamps and other supplies, licenses, and bonds, advertising, entertainment expenses.

8. The Knights of Columbus controlled sales policies; although the taxpayer recommended the appointment and discharge of local sales representatives; the sales representatives were

appointed only by the Knights of Columbus; the taxpayer supervised and trained the local sales representatives in order to increase production and he assisted them in some instances in order to make sales.

CONCLUSIONS OF LAW

A. The taxpayer's activities as a sales representative for the Knights of Columbus were conducted by him as an employee and not as an independent contractor; such activities did not constitute the carrying on of an unincorporated business within the intent and meaning of section 703 of the Tax Law. Edward J. and Evelyn D. Shea, State Tax Commission, Sept. 23, 1968.

B. The taxpayer's petition is sustained and it is determined that there is no deficiency in unincorporated business tax against the petitioner for the years 1960 through 1967.

DATED: Albany, New York
April 6, 1972.

STATE TAX COMMISSION

Norman Sullivan
COMMISSIONER

Bruce Hanley
COMMISSIONER

Milton Korman
COMMISSIONER