

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM A. McMAHAN

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1952, 1954, 1955 & 1956

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 6th day of September, 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon William A.
McMahan (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William A. McMahan
77 Linden Boulevard
Brooklyn, 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

6th day of September , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM A. McMAHAN

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For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s)) 1952, 1954, 1955 & 1956

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 6th day of September , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Samuel C. Littell

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Samuel C. Littell
120 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

6th day of September , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

September 6, 1972

William A. McMahan
77 Linden Boulevard
Brooklyn, New York

Dear Mr. McMahan:

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

Please take further notice that pursuant to **section 386j** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 Days** 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Solomon Sies
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	DETERMINATION
WILLIAM A. McMAHAN	:	
for Revision or Refund of Unincorporated	:	
Business taxes under Article 16-A of the	:	
Tax Law for the Years 1952, 1954, 1955	:	
and 1956.	:	

The taxpayer, William A. McMahan, filed applications for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the years 1952, 1954, 1955 and 1956 and hearings in connection therewith were held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 21 and November 10, 1966 at which hearing the taxpayer appeared and was represented by Samuel C. Littell, C.P.A.

ISSUES

A. Did the activities of the taxpayer in the sale of life insurance constitute the practice of an exempt profession?

B. Did the activities of the taxpayer in the sale of life insurance constitute the carrying on of an unincorporated business subject to unincorporated business tax?

C. Was the taxpayer entitled to an allocation of business income attributable to sources both within and without the State of New York?

FINDINGS OF FACT

1. The taxpayer, William A. McMahan filed personal income tax returns for 1952, 1954, 1955 and 1956 on which he reported income from commissions of \$47,613.06, \$57,525.72, \$117,906.01

and \$24,291.71 for said respective years. He deducted business expenses of \$17,294.59, \$25,164.73, \$46,426.05 and \$9,399.27 for the years 1952, 1954, 1955 and 1956, respectively.

2. On March 28, 1956, the Income Tax Bureau issued a notice of additional assessment for the year 1952 against the taxpayer, (Notice No. AA91780) disallowing certain business deductions on the ground that they represented capital expenditures and imposing additional personal income tax in the amount of \$403.18 and further imposed unincorporated business tax in the amount of \$800.55 and penalty and interest of \$184.13, on the ground that the activities reported by the taxpayer constitute the carrying on of an unincorporated business. The taxpayer is not contesting the assessment of additional personal income tax.

3. On April 7, 1958, the Income Tax Bureau issued a notice of additional assessment (Notice No. B412817), against the taxpayer for 1954 imposing unincorporated business tax in the amount of \$1,104.63, including penalty and interest. On March 23, 1959, the Income Tax Bureau issued a notice of additional assessment (Notice No. B572485), against the taxpayer for the year 1955 imposing unincorporated business tax in the amount of \$3,024.82, including penalty and interest. On February 19, 1960, the Income Tax Bureau issued a notice of additional assessment (Notice No. B742142), against the taxpayer for the year 1956, imposing unincorporated business tax in the amount of \$59.48. The aforementioned assessments are based upon the ground that the business activities as set forth in the taxpayer's returns constitute the carrying on of an unincorporated business subject to unincorporated business tax.

4. On his return for 1952, the taxpayer stated in part, as follows: "This taxpayer, William A. McMahan, handles insurance for a number of companies, as a representative, especially for very large policies and maintained office facilities at three locations, namely 33 W. 42 Street, New York City, at home at 77 Linden Boulevard, Brooklyn, New York and also at 120 Broadway, New York City. The establishment of additional office facilities at 120 Broadway, New York City in 1952 entailed considerable expense for additional office equipment, special paneling of walls and ceiling and other items for decorating, etc., so that suitable surroundings would be available for use when certain clients were interviewed, and discussions and explanations made in connection with insurance matters of considerable size.

"Wages were paid for secretarial services and for phone answering services, and for the numerous other items directly connected with the maintenance of office facilities, in addition to usual rent and other fixed charges. An automobile was used for business purposes and the office at home was equipped to transact business, with facilities for filing of records, correspondence, and day and night phone service, etc." The taxpayer maintained an office at 120 Broadway, New York City and at his home at 77 Linden Boulevard, Brooklyn, New York, during the years 1954, 1955 and 1956.

5. During the years in issue, the taxpayer was a life insurance agent licensed by the Insurance Department of the State of New York and licensed to sell life insurance in the States of New Jersey, Pennsylvania, Washington and California. During each of the years in issue, the taxpayer's income as a life insurance agent consisted entirely of commissions on life insurance purchased by clients or

customers as part of plans proposed by the taxpayer with a view toward reducing or minimizing the possible estate tax liabilities of such customers or clients. Sales of the life insurance in connection with the plans prepared by the taxpayer were made by him as an agent for various life insurance companies. During each of the years in issue, the taxpayer received commissions from at least twelve life insurance companies.

6. On his 1955 return, the taxpayer listed as a business deduction commissions paid to one James T. Bryan in the amount of \$25,967.00. He also deducted commissions paid on his returns for 1954 and 1956. The taxpayer, on his returns, also deducted rent for his office at home as well as for the office at 120 Broadway, New York City, wages of a full-time secretary, social security taxes as an employer, telephone and answering service, stationery and supplies, machine repairs and service, depreciation on office equipment, advertising, gratuities to building employees, business trips to Philadelphia, Chicago, St. Paul, Los Angeles, Seattle, Spokane and other cities, books for research, entertainment and gifts.

7. The taxpayer's income from commissions on the sale of life insurance was received by him under contracts with various life insurance companies. None of such insurance companies restricted the taxpayer's selling activities or exercised any material degree of control or supervision over the means and methods used by the taxpayer in the conduct of his selling activities. None of such insurance companies withheld social security or federal income taxes from the compensation paid to the taxpayer.

8. Although the taxpayer was licensed to sell insurance in the States of New Jersey, Pennsylvania, California and Washington and made trips to various places in such states in connection with the sale of life insurance, he did not maintain any office or other place of business outside the State of New York. The only offices maintained by the taxpayer were located in the State of New York.

9. On his personal income tax returns for the years in issue, the taxpayer claimed exemption from unincorporated business tax on the ground that more than 80% of his gross income was derived from personal services rendered by him from an activity in which capital is not an income producing factor and that he was entitled to a professional exemption. The taxpayer has taken courses at Columbia and New York Universities in the field of taxation and estate planning as applied to insurance and claims that he is an underwriter. However, the taxpayer's entire income from insurance was derived from his commissions on the sale of life insurance on behalf of various life insurance companies as more fully set forth in Finding #5 above.

CONCLUSIONS OF LAW

A. During the years 1952, 1954, 1955 and 1956, the taxpayer's activities in connection with the sale of life insurance did not constitute the practice of an exempt profession within the meaning and intent of section 386, Article 16-A of the Tax Law.

B. During the years 1952, 1954, 1955 and 1956, the activities of the taxpayer in the sale of life insurance for multiple principals were carried on by him as an independent contractor and not as an employee. The aforesaid activities during said years constituted the conduct of an unincorporated business within the meaning and

intent of section 386 of the Tax Law.

C. The taxpayer is not entitled to an allocation or apportionment of net income under section 386-g of the Tax Law as more fully set forth in Finding #8 above.

D. Accordingly, the assessments against the taxpayer for the years 1952, 1954, 1955 and 1956, as more fully set forth in Findings #2 and 3 above are correct. The said assessments do not include any tax or charge which could not have been lawfully demanded. The taxpayer's applications for revision or refund with respect to the years 1952, 1954, 1955 and 1956 are therefore denied.

DATED: Albany, New York
September 6, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER