

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
WILLIAM A. McMAHAN

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 6th day of September , 1972 , 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

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of September , 1972 , 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, 19 72

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 **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 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 Petition	:	
of	:	DECISION
WILLIAM A. McMAHAN	:	
	:	
for 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, William A. McMahan, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962. A formal hearing, in connection therewith, was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 10, 1966, at which hearing the taxpayer appeared and was represented by Samuel C. Littell, C.P.A.

ISSUES

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

II. 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?

III. 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 the year 1961 on which he reported income from commissions of \$59,284.98 and business expenses of \$29,793.62. For 1962 he reported

under Schedule "A" net business income of \$14,591.17.

2. On March 29, 1965, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency for the years 1961 and 1962 against the taxpayer imposing unincorporated business tax in the amount of \$1,046.57 on the ground that the income derived from taxpayer's activities were subject to unincorporated business tax. The taxpayer filed a timely petition for redetermination of said deficiency.

3. 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.

4. On his return for 1962, the taxpayer stated in part, as follows: "The business expenses included office rent, wages, telephone, postage, office supplies, equipment services, travel, hotels, meals, railroad fares, taxi fares, subway fares, typing expenses, auditing expenses, commissions, depreciation on office equipment, taxes, advertising, entertainment, stationery, business publications and other items."

5. In connection with his business activities during the years in issue, the taxpayer maintained and transacted business in an office at 120 Broadway, New York City, and an office at home at 77 Linden Boulevard, Brooklyn, New York.

6. 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, federal or state income taxes from the compensation paid to the taxpayer.

7. 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 of the State of New York. The only offices maintained by the taxpayer were located in the State of New York.

8. 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 from his commissions on the sale of life insurance on behalf of various life insurance companies as more fully set forth in Finding #6 above.

9. In his petition the taxpayer contends that most of his commission income was based upon renewals and therefore not subject

to unincorporated business tax but no proof was submitted to substantiate such contention. In any event, the commission income received by the taxpayer was directly attributable to a business regularly and systematically carried on by him within the State of New York.

CONCLUSIONS OF LAW

A. During the years 1961 and 1962, 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 703(c) of the Tax Law under Article 23.

B. During the years 1961 and 1962, 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 pursuant to the provisions of sections 703(b) and 703(f) of the Tax Law. The aforesaid activities of the taxpayer during said years constituted the conduct of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

C. The taxpayer is not entitled to an allocation or apportionment of net income under section 707(a) of the Tax Law as more fully set forth in Finding #7 above.

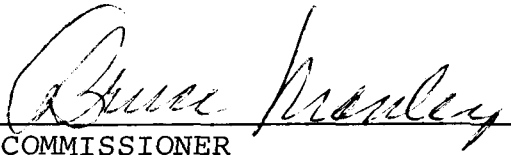
D. Accordingly, the Statement of Audit Changes and Notice of Deficiency against the taxpayer for the years 1961 and 1962 as more fully set forth in Finding #2 above are correct. The said notice of deficiency does not include any tax or charge which could not have been lawfully demanded. The taxpayer's petition

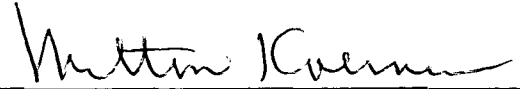
for redetermination of a deficiency or for refund of unincorporated business tax with respect to the years 1961 and 1962 is therefore denied.

DATED: Albany, New York
September 6, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER