

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT A. OWENS

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 and 1966.

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 19th day of July, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon ROBERT A. OWENS

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Robert A. Owens
Box 66
Westfield, 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

19th day of July, 1972

Joyce S. Van Rotten

Lynn Wilson



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 19, 1972

Robert A. Owens
Box 66
Westfield, New York

Dear Mr. Owens:

Please take notice of the **SUPPLEMENTAL 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 deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT A. OWENS	:	SUPPLEMENTAL
	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1965 and 1966.	:	
	:	

The petitioner has timely requested reconsideration of the decision dated April 5, 1972, as it affects the allocation of his expenses to Northwestern Mutual Life Insurance Company and to commissions from other companies. On the application of the petitioner, the decision is supplemented and modified as follows:

FINDINGS OF FACT

20. The petitioner's expenses were \$8,274.06 for 1965 and \$8,389.71 for 1966 and these expenses were attributable to all of his commissions for each year.

CONCLUSIONS OF LAW

Paragraphs B and C are revoked and superseded by the following paragraphs.

B. The petitioner's expenses for 1965 and 1966 shall be prorated and allocated. Sixty-one and five tenths percent of the 1965 expenses and sixty-one and five tenths percent of the 1966 expenses are allocated to income from Northwestern Mutual Life Insurance Company. The balance is allocated to unincorporated business income.

C. The petitioner's activities for companies other than Northwestern Mutual Life Insurance Company are subject to unincorporated business tax.

DATED: Albany, New York

July 19, 1972

STATE TAX COMMISSION

Norman Gellman
COMMISSIONER

COMMISSIONER

Milton Krum
COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT A. OWENS

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) 23 of the
Tax Law for the (Year(s) 1965 and 1966:

State of New York
County of Albany

Rae Zimmerman , 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 5th day of April , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert A. Owens
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Robert A. Owens
Box 66
Westfield, 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

5th day of April , 1972.

Martha Furaco

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT A. OWENS

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 and 1966

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

State of New York
County of Albany

Rae Zimmerman, 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 5th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon E. W. Dann Stevens, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: E. W. Dann Stevens, Esq.
Williams, Stevens & McCarville
1920 Liberty Bank Building
Buffalo, 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

5th day of April, 1972.

Matthew J. Funnell

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

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 5, 1972

Robert A. Owens
Box 66
Westfield, New York

Dear Mr. Owens:

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,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT A. OWENS : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the years 1965 and 1966.

Robert A. Owens petitioned for a redetermination of a deficiency in unincorporated business taxes for the years 1965 and 1966. A formal hearing was held on June 24, 1971 before L. Robert Leisner, Hearing Officer. The petitioner was represented by Williams, Stevens & McCarville, E. W. Dann Stevens, Esq., of Counsel. The Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the petitioner's activities in 1965 and 1966 as an insurance salesman, subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Robert A. Owens, timely filed New York State income tax returns, but did not file unincorporated business tax returns for the years 1965 and 1966.

2. The taxpayer petitioned for a redetermination of a Notice of Deficiency in unincorporated business tax for the years 1965 and 1966 issued under File No. 76050834.

3. Petitioner claimed his insurance sales activities were not subject to unincorporated business tax.

4. Petitioner represented the Northwestern Mutual Life Insurance Company in Dunkirk, New York. The office was established upon the orders of the general agent.

5. The petitioner paid the rent of \$25.00 monthly for his office on Central Avenue, Dunkirk, New York. He was reimbursed by the Buffalo general agent, John Propis, for the rent. He also was reimbursed for his other expenses by an additional commission factor.

6. Petitioner used the office as a sales office. He was in the office every other day in the morning for about six hours a week. Petitioner had no authority for an assistant and petitioner had never had an assistant. The company would have had to hire the assistant.

7. The names on the office door were "N. M. L. Insurance Company", and "Robert A. Owens".

8. Petitioner's telephone was listed under Northwest Mutual Life Insurance Company.

9. The petitioner had a part-time secretary.

10. The petitioner had an exclusive territory, the northern half of Chautauqua County.

11. The final decision on life insurance contracts was made by Northwestern Mutual Life Insurance Company. Petitioner was paid by Northwestern Mutual Life Insurance Company. All checks received were forwarded to the company through Mr. Propis, the general agent.

12. The petitioner participated in the Northwestern Mutual Life Insurance pension plan.

13. Petitioner consulted with John Propis, the general agent, a minimum of twice a week and was under his supervision. Petitioner was required to attend regular sales meetings and regularly report to the general agent.

14. Mr. Propis, the general agent, set a quota for the petitioner once a year. The general agent could fire the petitioner.

15. Advertising was approved or supplied by Northwestern Mutual Life Insurance Company.

16. The Northwestern Mutual Life Insurance Company supplied stationery, forms and contracts.

17. The contract with Northwestern Mutual Life Insurance provided that petitioner could not sell insurance with any other company if the insurance being written was acceptable to Northwestern Mutual and the type of risk they sold. The company had no hospitalization, disability income, and a very limited pension portfolio.

18. In 1965, for example, the petitioner received commissions from the following companies:

Northwestern Mutual Life	\$14,459.35	61.5%
Massachusetts Mutual	2,536.50	10.8
State Mutual	5,664.48	24.1
Connecticut General	303.17	
Empire State	18.47	
Maccabees	144.69	3.6
National Life Assurance	5.41	
N.E. Mutual	247.71	
Union Mutual	<u>137.62</u>	<u> </u>
TOTAL:	\$23,517.40	100.0%

19. In 1966 the petitioner had commissions of \$22,380.72, of which approximately \$13,764.34 was from Northwestern Mutual Life Insurance Company.

CONCLUSIONS OF LAW

A. The taxpayer's petition is sustained in part. The petitioner's sales activities for Northwestern Mutual Life Insurance Company were not subject to unincorporated business taxes in 1965 and 1966. The petition is in all other respects denied.

B. Petitioner's evidence does not demonstrate that any portion of petitioner's expenses are allocable to commissions from the other companies. The expenses are allocable to Northwestern Mutual Life Insurance Company.

C. The petitioner's activities for companies other than New England Mutual Life Insurance are subject to unincorporated business tax.

D. Interest shall be added to the total amount of the deficiencies, redetermined according to this decision, until paid.

DATED: Albany, New York

April 5, 1972

STATE TAX COMMISSION

Norman Bellman
COMMISSIONER

COMMISSIONER

Milton Krumm
COMMISSIONER