

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS J. SCHILLERSTROM

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) 1964, 1965 & 1966

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 14th day of January , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Abraham Eletz

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Abraham Eletz
c/o Anchin, Block & Anchin
270 Madison Avenue
New York, New York 10016
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

14th day of January , 19 72

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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THOMAS J. SCHILLERSTROM

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Tax Law for the (Year(s) 1964, 1965 & 1966

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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 14th day of January , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Thomas J.
Schillerstrom (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Thomas J. Schillerstrom
61 Greenacres Avenue
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
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Rae Zimmerman

Martha Funaro



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

January 14, 1972

Thomas J. Schillerstrom
61 Greenacres Avenue
Scarsdale, New York

Dear Sir:

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,


Paul B. Coburn

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THOMAS J. SCHILLERSTROM : DECISION
for Redetermination of Deficiency or for :
Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1964, 1965 and 1966. :
:

Petitioner, Thomas J. Schillerstrom, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964, 1965 and 1966. (File No. 66230394). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, for October 20, 1971, at 10:45 A.M. At said time and place petitioner's representative, Abraham Eletz, C.P.A., waived a formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Thomas J. Schillerstrom's activities as a general agent for The Paul Revere Life Insurance Company and one of its subsidiaries during the years 1964, 1965 and 1966 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Thomas J. Schillerstrom, and his wife filed New York State income tax resident returns for the years 1964, 1965

and 1966. He did not file New York State unincorporated Business tax returns for said years.

2. On February 19, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Thomas J. Schillerstrom, imposing unincorporated business tax upon the income received by him from the operation of his insurance agency during the years 1964, 1965 and 1966. It also imposed a penalty of \$454.34 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,472.16.

3. Petitioner, Thomas J. Schillerstrom, was a general agent for The Paul Revere Life Insurance Company and its subsidiary, The Massachusetts Protective Association, Incorporated, during the years 1964, 1965 and 1966 pursuant to a written agreement with the company. He received override commissions on the sales of insurance agents under his jurisdiction. The company did not withhold Federal and New York State income taxes from the commissions paid to him. He listed himself as self-employed on his 1966 and 1967 federal income tax returns.

4. Petitioner, Thomas J. Schillerstrom, failed to submit any documentary or other satisfactory evidence to prove that there was any substantial direction and control over his activities by The Paul Revere Life Insurance Company or its subsidiary during the years 1964, 1965 and 1966 or in fact that there were any other indicia or circumstances to indicate that he was an employee of the company.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Thomas J. Schillerstrom, during the years 1964, 1965 and 1966 from The Paul Revere Life Insurance Company and one of its subsidiaries constituted receipts from his regular business as a general agent for said companies and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Thomas J. Schillerstrom, during the years 1964, 1965 and 1966 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Thomas J. Schillerstrom is denied and the Notice of Deficiency issued February 19, 1968, is sustained.

DATED: Albany, New York
January 14, 1972

STATE TAX COMMISSION

Norman Galloran

COMMISSIONER

Bruce Mancoske

COMMISSIONER

Wilton Koerner

COMMISSIONER