

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH WROBEL

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 - 1967

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 24 day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon JOSEPH

WROBEL (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph Wrobel

39 - 65 52nd Street

Woodside, New York 11377

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

24 day of August , 1972

Joseph L. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH WROBEL

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 & 1967

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 24th day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Seymour Goldberg

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Seymour Goldberg
66 Court Street
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

24th day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH WROBEL

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 - 1967 :

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 1st day of September , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Seymour Goldberg

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

wrapper addressed as follows: Seymour Goldberg
66 Court Street
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

1st day of September , 1972

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
August 24, 1972

Mr. Joseph Wrobel
39 - 65 52nd Street
Woodside, New York 11377

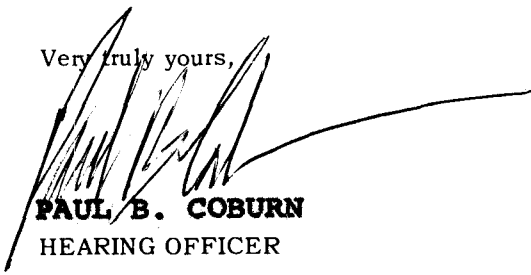
Dear Mr. Wrobel:

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 **four 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,


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	:	
JOSEPH WROBEL	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964, 1965, 1966 and	:	
1967.	:	

Petitioner, Joseph Wrobel, 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, 1966 and 1967. (File Nos. 66124970 and 74970596). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 17, 1972, at 10:30 A.M. Petitioner appeared by Seymour Goldberg, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Did petitioner, Joseph Wrobel's activities as an investment advisor and mutual fund and life insurance salesman during the years 1964, 1965, 1966 and 1967, constitute the practice of a profession?

II. Did petitioner, Joseph Wrobel's sales activities as a mutual fund salesman on behalf of Investors Planning Corporation during the year 1964 constitute the carrying on of an unincorporated business?

III. Did petitioner, Joseph Wrobel, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1964, 1965, 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Joseph Wrobel, and his wife filed New York State income tax resident returns for the years 1964, 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On April 28, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joseph Wrobel, imposing unincorporated business tax upon the income received by him from his activities as a mutual fund salesman during the year 1967. It also imposed a penalty for failure to file a New York State unincorporated business tax return for said year in the sum of \$88.59. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$464.98.

3. On June 30, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joseph Wrobel, imposing unincorporated business tax upon the income received by him from his activities as a mutual fund salesman during the years 1964, 1965 and 1966. It also imposed a penalty for failure to file New York State unincorporated business tax returns for said years in the sum of \$155.33. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$865.63.

4. Petitioner, Joseph Wrobel, was a mutual fund salesman selling mutual funds for Investors Planning Corporation during the year 1964. He specialized in the establishment of self-employed retirement plans for professional persons funded through mutual funds. He did not have any employees. He used its office and telephone.

5. Investors Planning Corporation did not withhold Federal and New York State income taxes and social security tax from the commissions paid to petitioner, Joseph Wrobel, during the year 1964. He was not reimbursed for any of his expenses. He deducted these expenses on Schedule "C" of his Federal income tax return. He was not covered

for unemployment insurance. Investors Planning Corporation did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales.

6. Petitioner, Joseph Wrobel, received a degree in accounting from George Washington University in 1950. He was employed by IBM Corp. as an accountant from 1950 to 1953. He was employed by the Internal Revenue Service as a field agent from 1953 to 1954. He sold mutual funds on a commission basis for Investors Planning Corporation from 1955 through 1964. He severed his relationship with Investors Planning Corporation in 1965 and commenced selling mutual funds and life insurance for his own account.

7. Petitioner, Joseph Wrobel's business activities during the years 1964, 1965, 1966 and 1967 consisted of approaching professionals, such as lawyers, dentists, doctors and architects, in order to interest them in establishing self-employment retirement plans. If they were interested in establishing such a plan, he would sell them mutual funds or life insurance to fund the plan. He would take care of all of the paper work required to carry out the plan.

8. Petitioner, Joseph Wrobel's income as an investment advisor and mutual fund and insurance salesman during the years 1964, 1965, 1966 and 1967, was derived solely from personal services rendered. Capital was not a material income producing factor.

9. Petitioner, Joseph Wrobel, was advised by his attorney and his accountant that he was not required to file New York State unincorporated business tax returns for the years 1964, 1965, 1966 and 1967.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Joseph Wrobel, as an investment advisor and mutual fund and life insurance salesman during the years 1964, 1965, 1966 and 1967, although requiring special knowledge and experience, did not constitute the practice of a

profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the income received by petitioner, Joseph Wrobel, from Investors Planning Corporation during the year 1964 constituted income from his regular business as an investment advisor and mutual fund and life insurance salesman 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.


C. That the aforesaid activities of petitioner, Joseph Wrobel, during the years 1964, 1965, 1966 and 1967 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.

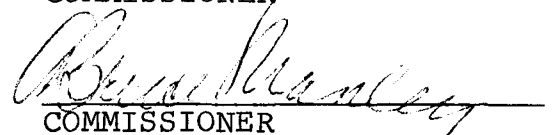
D. That petitioner, Joseph Wrobel, has reasonable cause for not filing New York State unincorporated business tax returns for the years 1964, 1965, 1966 and 1967 and, therefore, the penalties assessed pursuant to section 685(a) of the Tax Law are waived.

E. That the petition of Joseph Wrobel is granted to the extent of cancelling penalties imposed pursuant to section 685(a) of the Tax Law in the sum of \$155.33 for the years 1964, 1965 and 1966, and in the sum of \$88.59 for the year 1967 and the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued April 28, 1969, and June 30, 1969, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 24, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER