

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN PENNINGTON

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) 1963 and 1964.

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, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon JOHN PENNINGTON

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

wrapper addressed as follows: Mr. John Pennington
349 Evans Street
Buffalo, New York 14221

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, 1973

James J. Duraro

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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JOHN PENNINGTON

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 19th day of July, 1973, she served the within

Notice of Decision (or Determination) by (certified) mail upon DONALD C. LUBICK &
of HODGSON, RUSS, ANDREWS, DAVID E. MANCH, ESQS.
WOODS & GOODYEAR

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Donald C. Lubick & David E. Manch, Esqs.
Hodgson, Russ, Andrews, Woods & Goodyear
Suite 1800

One M & T Plaza

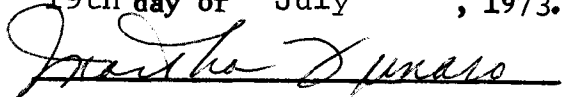
Buffalo, New York 14203

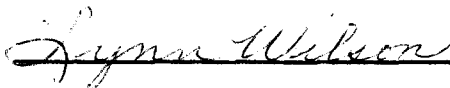
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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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
July 19, 1973

Mr. John Pennington
349 Evans Street
Buffalo, New York 14221

Dear Mr. Pennington:

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	:	
JOHN PENNINGTON	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1963 and 1964.	:	

The taxpayer, John Pennington, filed a petition for a redetermination of a deficiency in unincorporated business taxes for the years 1963 and 1964.

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York on May 19, 1971. Petitioner appeared personally and was represented by Hodgson, Russ, Andrews, Woods & Goodyear, (Donald Lubick, Esq., and David Manch, Esq., of Counsel) and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was Plan Designers, Inc. so integrated with petitioner's unincorporated business as a general insurance agent that his salary income from Plan Designers, Inc. constituted additional unincorporated business income?

FINDINGS OF FACT

1. The taxpayer, John Pennington, filed personal income tax returns and unincorporated business income tax returns for the years 1963 and 1964. On his personal income tax returns, John Pennington reported total wages in the amount of \$12,184.08 for 1963 and \$13,055.49 for 1964 received during said years from

Plan Designers, Inc. The taxpayer reported unincorporated business income in the amount of \$12,827.28 for 1963 and \$23,785.07 for 1964. On August 12, 1966, the Department of Taxation and Finance issued a Statement of Audit Changes under bill no. 4-12278147 including the salary income reported by John Pennington as additional business income subject to the unincorporated business income tax; and, accordingly, issued a Notice of Deficiency therefor.

2. During the years 1963 and 1964, John Pennington was engaged in business as a general agent for the State Mutual Life Insurance Company of America for the Buffalo, New York area. His duties in operating the general agency were primarily in recruiting and developing agents for the company, processing applications and claims, and collecting premiums. The taxpayer employed clerical employees to assist him in the business of the general agency.

3. During the years 1963 and 1964, John Pennington was the President and a Director of Plan Designers, Inc., a New York Corporation. Together with his wife, he owned all the capital stock of the corporation. The corporation was engaged in the business of designing, implementing and servicing various types of employee benefit programs for business clients, including qualified pension plans and similar programs; that most of the plans were funded by insurance, and although the majority of the commissions earned by the corporation were from State Mutual Life Insurance Company of America, only \$1,080.79 in 1963 and \$24.64 in 1964 represented commissions earned from completely new business placed with State Mutual.

4. The taxpayer's duties with Plan Designers, Inc. included meeting with clients of the corporation, drawing up specifications for plans, submitting bids to various insurance companies or corporate

trustees, explaining the plans to the clients' employees, assisting in annual actuarial evaluations performed by the actuaries retained and paid by the corporation, and assisting in the preparation of legal documents in conjunction with attorneys retained and paid by the corporation.

5. The general agency and the corporation maintained separate books, separate bank accounts and financial statements. The two entities occupied the same premises but the corporation paid rent to the general agency. Separate telephone directory listings were maintained and the corporation paid its pro rata share of the telephone bills. The employees of the corporation were paid directly by the corporation and social security taxes and federal and state withholding taxes were withheld from the salaries paid to all employees, including John Pennington.

CONCLUSIONS OF LAW

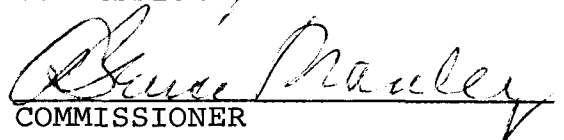
A. The taxpayer's general agency is not integrated with Plan Designers, Inc. The income received by John Pennington from the corporation during the years 1963 and 1964 did not constitute receipts from a business regularly carried on by the taxpayer within the intent and meaning of section 703(b) Article 23 of the Tax Law.


B. The taxpayer's petition for redetermination of the deficiencies is hereby sustained. It is determined that there are no deficiencies against the petitioner for the years 1963 and 1964.

DATED: Albany, New York
July 19, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER