

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEIGH J. BAIR

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, 1964, :
& 1965.

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 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Leigh J. Bair,

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Leigh J. Bair
Oxford, Maryland 21654

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

13th day of February, 1974.

James S. Van Patten
Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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Tax Law for the (Year(s) 1963, 1964, :
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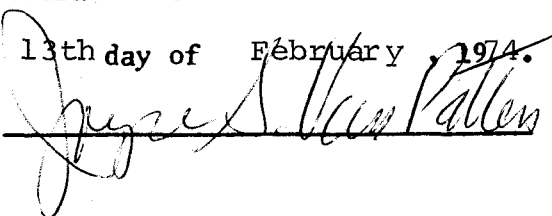
State of New York
County of Albany

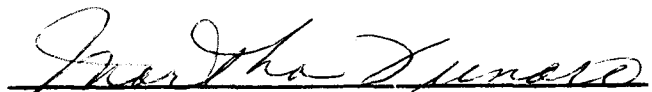
Martha Funaro, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon William Slivka,
Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William Slivka, Esq.
Sherman, Feigen & Slivka
292 Madison Avenue
New York, New York 10017
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

13th day of February, 1974.


James S. Van Allen


Martha Funaro



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
Mario A. Procaccino
~~FOR MR. PROCACCINO~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 13, 1974

Mr. Leigh J. Bair
Oxford, Maryland 21654

Dear Mr. Bair:

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 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,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEIGH J. BAIR :
for a Redetermination of a Deficiency :
or for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1963, 1964 and 1965. :

A hearing was held on June 12, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by William Slivka, Esq. The Income Tax Bureau was represented by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

The issues in this case are (a) whether the salary received by Mr. Bair from a corporation should be considered part of the income of his unincorporated business and (b) whether such salary if not part of the unincorporated business is allocable by the number of days worked in and out of the state on the

basis of the records presented by the taxpayer.

FINDINGS OF FACT

1. Mr. Bair was a resident of New York City during January, 1963 but since then has been a nonresident of New York and a resident of Maryland.

2. Leigh J. Bair, the petitioner herein, is a soliciting agent for the National Life Insurance Company of Montpelier, Vermont. The commissions earned by Mr. Bair were for ordinary life insurance policies, endowment policies primarily for estate planning purposes, key-man insurance for corporations and stock retirement insurance. He maintains an office at 292 Madison Avenue, New York City. He filed returns for unincorporated business tax for such business showing all such business as New York income. His personal income tax returns also showed all this income as taxable to New York.

3. In 1958, Mr. Bair formed a corporation, the Leigh J. Bair Corporation also of 292 Madison Avenue, New York City. This was formed primarily to sell group life insurance. One of its employees, Edward J. Griffin, had become a 50% shareholder before 1963, the first year in issue here. After 1965, he became the sole owner of the company. Mr. Griffin was primarily a manager and Mr. Bair was primarily a salesman. The corporation sold group life insurance, group sickness and accident insurance, group major medical insurance and group accidental death and dismemberment insurance. None of this was placed with National

Life Insurance Company since that company wrote no group business. They did most of their business for private trade associations mainly in Washington, D.C.

4. Mr. Bair received a salary from the Bair Corporation from which social security and income taxes were withheld. Mr. Bair allocated this salary on his New York tax returns. His travel expenses were reimbursed entirely by the corporation. Mr. Bair reported this salary on his personal income tax returns and allocated it between New York and non-New York sources by the number of days worked in and out of New York.

5. The rent of the premises at 292 Madison Avenue was allocated between the corporation and Mr. Bair personally.

6. Mr. Bair presented worksheets showing his visits to out-of-state clients in the years in question. These substantiated the allocation ratios shown on his returns.

CONCLUSIONS OF LAW

The salary income is not part of the unincorporated business. The allocation of salary on the personal income tax returns is correct. The deficiency is incorrect and is cancelled in its entirety.

DATED: Albany, New York
February 13, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER