

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY COHEN

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) 1969 :

State of New York
County of Albany

Janet Mack , 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 30th day of October , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Murray Cohen

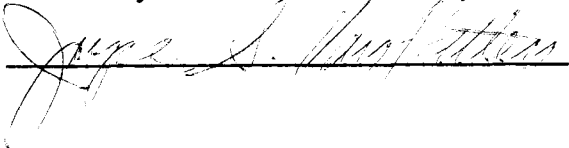
~~(representative of the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Murray Cohen
3000 Bronx Park East, Apt. 1J
Bronx, New York

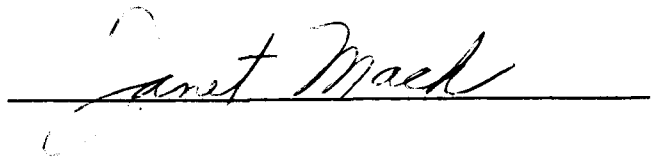
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~xx~~ 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

30th day of October , 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY COHEN

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) 1969

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

State of New York
County of Albany

Janet Mack , 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 30th day of October , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Aaron Schwinger,
C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Aaron Schwinger, C.P.A.

c/o Schwinger, Simon & Co.
225 Broadway

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

30th day of October , 1974

[Signature]

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
October 30, 1974

Mr. Murray Cohen
3000 Bronx Park East, Apt. 1J
Bronx, New York 10467

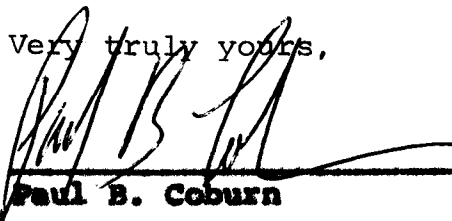
Dear Mr. Cohen:

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,



Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MURRAY COHEN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1969.	:	

Petitioner, Murray Cohen, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1969. (File No. 34118734). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on May 17, 1974, at 10:30 A.M. Petitioner appeared by Aaron Schwinger, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, Murray Cohen's activities as a life insurance and mutual fund salesman during the year 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Murray Cohen, and his wife filed a New York State income tax resident return for the year 1969. He did not file a New York State unincorporated business tax return for said year.

2. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Murray Cohen, imposing unincorporated business tax in the sum of \$1,062.46 upon the income received by him from his activities as a life insurance and mutual fund salesman during the year 1969. It also imposed a penalty in the sum of \$419.67 for failure to file an unincorporated business tax return and pay unincorporated business tax for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,659.88.

3. Petitioner, Murray Cohen, was a debit life insurance salesman for the Prudential Insurance Company of America during the year 1969. Debit life insurance is generally the sale of small insurance policies under which the agent personally makes monthly collections of the premiums. Upon his employment by the company, he was given a debit book containing the name of the policyholders in the geographic territory assigned to him.

He was employed in the Fordham district office of the company. He was supervised by a manager and a staff manager. He was required to work 40 hours during a five-day week. He was paid a weekly salary plus commissions. Federal and New York State income taxes and social security tax were withheld from the compensation paid to him. His gross compensation for the year was \$12,057.73. He received group insurance, hospital insurance, disability and pension benefits. He was entitled to paid vacation and sick days. He was not permitted to sell insurance for any other companies. He was not reimbursed for his out-of-pocket business expenses. He was provided with office facilities in the Fordham office. He filed a Form 2106 "Employee Business Expenses" to report said expenses on his Federal income tax return. He was a member of the Insurance Workers International Union which had a collective bargaining agreement with the company. The company exercised substantial supervision and control over his sales activities and techniques and over the time he devoted to sales.

4. Petitioner, Murray Cohen, was also a mutual fund salesman during the year 1969. He sold mutual funds for Eastern States Investors Corporation. His gross commissions from the sale of mutual funds totaled \$25,454.19. The company did not withhold Federal or New York State income taxes or social security tax from

the commissions paid to him. It did not cover him for workmen's compensation insurance. It provided him with telephone facilities, sales materials and some leads. He was not reimbursed for any of his out-of-pocket business expenses, including his registration fee paid to the National Association of Securities Dealers. It did not exercise any substantial supervision and control of his sales activities and techniques or over the time that he devoted to sales, except to prohibit him from selling mutual funds for other companies.

5. Petitioner, Murray Cohen's business expenses during the year 1969 incurred in connection with his sales activities on behalf of Prudential Insurance Company of America and Eastern States Investors Corporation totaled \$8,194.45 of which \$2,634.00 was allocable to his activities on behalf of Prudential Insurance Company of America and \$5,560.45 was allocable to his activities on behalf of Eastern States Investors Corporation.

6. Petitioner, Murray Cohen, prepared his own income tax returns for the year 1969. He was not aware that he was required to file a New York State unincorporated business tax return for said year.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Murray Cohen, from the Prudential Insurance Company of America during the year 1969 constituted compensation as an employee and was 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 income received by petitioner, Murray Cohen, from Eastern States Investors Corporation during the year 1969 constituted income from his regular business as a mutual fund 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 petitioner, Murray Cohen, did not have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1969 and therefore the Income Tax Bureau properly imposed penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law. However, the penalties must be computed on the sum of \$600.32 which is the amount of unincorporated business tax due.

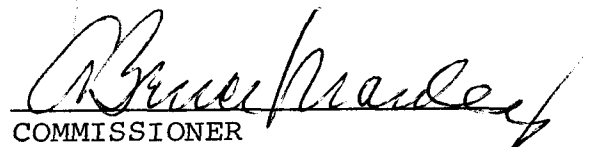
D. That the petition of Murray Cohen is granted to the extent of reducing net income for the year 1969 subject to the unincorporated business tax from \$19,317.47 to \$10,914.99, of reducing unincorporated business tax due from \$1,062.46 to \$600.32, together with such interest as may be lawfully owing and of reducing the penalty imposed pursuant to sections 685(a)(1) and 685(a)(2) from \$419.67 to \$237.12; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 29, 1973 and that except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

October 30, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER