

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS G. FUCHS, JR. and
JOANNE W. FUCHS

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) 1967 and 1968.:

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 25th day of October, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon LOUIS G. FUCHS, JR.
and

JOANNE W. FUCHS (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Louis G. Fuchs, Jr.
6470 Old Lake Shore Road
Lake View, New York 14085

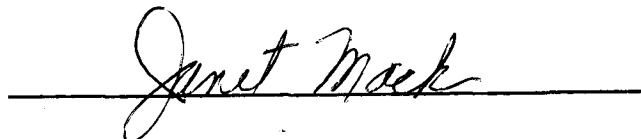
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

25th day of October, 1974





STATE OF NEW YORK
STATE TAX COMMISSION

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of

LOUIS G. FUCHS, JR. and
JOANNE W. FUCHS

For a Redetermination of a Deficiency or
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Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1967 and 1968. :

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 25th day of October, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon WILLIAM H. WEBER, JR.,
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 H. Weber, Jr., Esq.

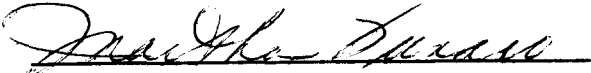
Weber and Weston
1300 Genesee Building
Buffalo, New York 14202

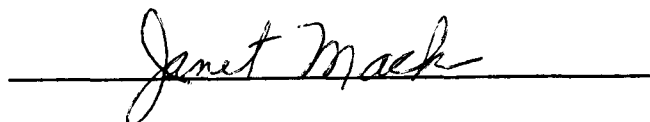
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known address of the (representative of the) petitioner.

Sworn to before me this

25th day of October, 1974.







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 25, 1974

Mr. and Mrs. Louis G. Fuchs, Jr.
6470 Old Lake Shore Road
Lake View, New York 14085

Dear Mr. and Mrs. Fuchs:

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,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

LOUIS G. FUCHS, JR. :

and :

JOANNE W. FUCHS :

DECISION

for a Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1967 and 1968. :

Petitioners, Louis G. Fuchs, Jr. and Joanne W. Fuchs, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1967 and 1968. (File No. 8-12007907). 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 October 16, 1973, at 1:30 P.M. Weber and Weston, by William H. Weber, Jr., Esq., appeared for petitioners. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Was petitioner, Louis G. Fuchs, Jr., a full-time life insurance agent in the years 1967 and 1968 and, therefore, not subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Louis G. Fuchs, Jr. and Joanne W. Fuchs, timely filed New York State income tax resident returns and unincorporated business tax returns for the years 1967 and 1968. They did not include in said unincorporated business returns certain commissions received by Louis G. Fuchs, Jr., while acting in the capacity of a life insurance salesman.

2. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Louis G. Fuchs, Jr., and Joanne W. Fuchs, imposing unincorporated business tax upon the income received by Louis G. Fuchs, Jr. while acting as a life insurance salesman on the grounds that he was not serving full time in such capacity. In accordance with the aforesaid Statement of Audit Changes, the Bureau issued a Notice of Deficiency in the sum of \$456.15.

3. Petitioner, Louis G. Fuchs, Jr., was a life insurance salesman prior to April 1, 1967. On that date, he became a General Agent with the Mutual Benefit Life Insurance Company. He continued to be a part-time life insurance salesman. He included all income earned in his capacity as General Agent after April 1, 1967, on his unincorporated business returns for 1967 and 1968. He omitted from said returns all income earned from January 1, 1967 to April 1, 1967, and also all renewal commissions based upon life insurance policies sold prior to April 1, 1967. He excluded commissions earned from the sale of new policies subsequent to April 1, 1967.

4. Prior to April 1, 1967, while petitioner, Louis G. Fuchs, Jr., was a life insurance agent for New England Life through the William R. Wagner Agency, he was provided with all secretarial services, telephone, office space, desks, equipment and supplies. His wages were subject to withholding social security taxes and he was provided with a pension plan, hospitalization, major medical and group life insurance. His activities were subject to the agency's direction and control.

5. Petitioner, Louis G. Fuchs, Jr., became a full-time General Agent with the Mutual Benefit Life Insurance Company on April 1, 1967. He was not expected to continue to sell life insurance, and did so only after his eight-hour days as a General Agent.

6. Petitioner, Louis G. Fuchs, Jr., filed Schedule "C"'s with his Federal income tax returns for 1967. On said schedules, he listed business expenses in connection with sales of new policies. He did not include said expenses in computing unincorporated business tax. He incurred no expenses in receiving income from renewal policies. If he had died during the period in question, said income would have been received by his wife. He had a written employment contract with the William R. Wagner Agency and New England Life.

CONCLUSIONS OF LAW

A. That petitioner, Louis G. Fuchs, Jr., was a full-time life insurance salesman prior to April 1, 1967, and all of his commissions and renewal commissions arising from sales made from January 1, 1967 to April 1, 1967, are excluded from unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

B. That petitioner, Louis G. Fuchs, Jr., was not a full-time life insurance salesman after April 1, 1967, and accordingly, all income from commissions for policies sold after that date are properly includible in computing unincorporated business tax.


C. That a recomputation of petitioner, Louis G. Fuchs, Jr.'s unincorporated business taxes for the years 1967 and 1968 shall be made, with 9/12 of all first-year commissions sold in 1967 subject to tax, and all first-year commissions sold in 1968 subject to tax. No renewal commissions received in 1967 are subject to tax. All renewal commissions received in 1968 attributable to first-year commissions sold after April 1, 1967, are to be taxed. Renewal commissions received in 1968 and in future years which are attributable to policies sold prior to April 1, 1967, when petitioner was an employee, are not subject to tax.

D. That the petition of Louis G. Fuchs, Jr. and Joanne W. Fuchs, is sustained to the extent of the modifications above and is in all other respects denied.

DATED: Albany, New York
October 25, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER