

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT LEBENSON

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 (a) 23 of the
Tax Law for the Year(s) 1963 through :
1969.

State of New York
County of Albany

Joyce Van Patten , 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 28th day of June , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Herbert Lebonson

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Herbert Lebonson

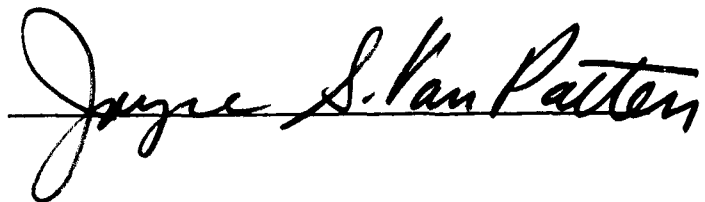
226-26 Union Turnpike
Flushing, New York 11364

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

28th day of June , 1974.



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT LEBENSON

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 (x) 23 of the
Tax Law for the Year(s) 1963 through :
1969.

State of New York
County of Albany

Joyce Van Patten, 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 28th day of June, 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.

292 Madison Avenue
New York, 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

28th day of June, 1974.

Joyce S. Van Patten



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
June 28, 1974

Mr. Herbert Levenson
226-26 Union Turnpike
Flushing, New York 11364

Dear Mr. Levenson:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section **(X) 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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HERBERT LEBENSON	:	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 through 1969.	:	
	:	
	:	

Herbert Levenson, filed petitions under section 689 of the Tax Law for the redetermination of deficiencies, each issued on July 26, 1971, in the amount of \$1,442.39, plus interest of \$516.69 for a total of \$1,959.08 for the years 1963 through 1966 and in the amount of \$1,480.53 plus interest of \$192.32 for a total of \$1,672.85 for the years 1967 through 1969.

A hearing was duly held on December 5, 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 Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner, an insurance agent, is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner; during the years in question, was a resident of Flushing, Queens.

2. Petitioner was a soliciting life insurance agent working out of the office of Carl E. Haas, 26 Court Street, Brooklyn, New York, a general agent for Continental Assurance Company. Each year he received as little as 35% or as much as 65% of his income from Continental. There is no evidence that he was a career agent for Continental.

3. Petitioner also sells general (nonlife) insurance, which he places through the Haas Agency, 1615 Northern Boulevard, Manhasset, Long Island. Petitioner has desk space there.

4. Almost all of petitioner's sales are made in Queens, Nassau and Suffolk counties although he can sell any place he pleases. Petitioner received some income during these years from State Mutual representing renewal commissions. He had been an agent for them from 1950 to 1956.

5. Petitioner had listed his occupation on some tax returns as self-employed. He had his own stationary. He paid his own expenses which are substantial and without reimbursement. He pays his own Federal self-employment tax.

6. The Commission has previously decided that petitioner was subject to tax for the years 1960, 1961 and 1962 in a decision rendered December 23, 1970.

7. The petitioner did not appear or testify at the hearing.

CONCLUSIONS OF LAW

The fact that petitioner's Social Security tax was not withheld by the insurance company makes it very unlikely that he was regarded by it as a full-time life insurance agent. Petitioner has not carried the burden of proof that he is exempt from tax.

The deficiencies are found to be correct and are due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
June 28, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER