

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN P. PROPIS

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) 1966, 1967 &  
1968

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 8th day of March , 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon John P. Propis

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

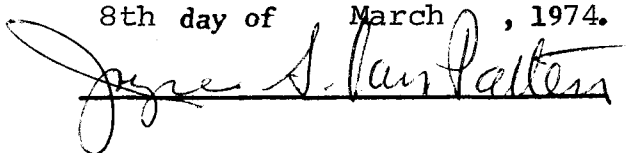
wrapper addressed as follows: Mr. John P. Propis  
55 Troy-Del Way  
Williamsville, New York 14221

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

8th day of March , 1974.





STATE OF NEW YORK  
STATE TAX COMMISSION

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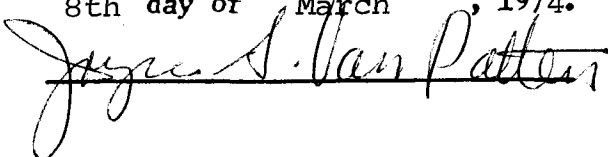
Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 8th day of March , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Kendall J.  
Atkinson (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Kendall J. Atkinson  
290 Main Street Building  
Buffalo, New York 14202

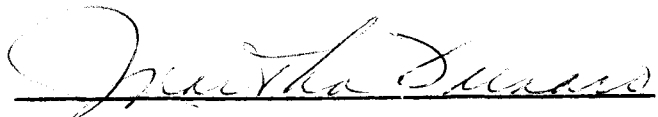
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Sworn to before me this

8th day of March , 1974.

  
James S. Van Patten

  
Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
Mario A. Procaccino,  
~~XXXXXXXXXX~~ ON, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227  
AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 8, 1974

Mr. John P. Propis  
55 Troy-Del Way  
Williamsville, New York 14221

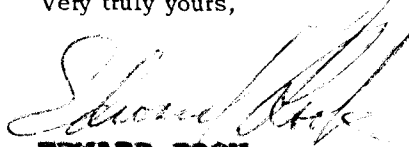
Dear Mr. Propis:

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,

  
**EDWARD ROOK,**  
~~XXXXXXXXXX~~  
**Secretary, State Tax**  
**Commission**

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN P. PROPIS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966, 1967 and 1968.	:	
	:	
	:	

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Petitioner, John P. Propis, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1966, 1967 and 1968.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on February 9, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Kendall J. Atkinson, C.P.A., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Is the taxpayer liable for unincorporated business taxes on his income earned from the sale of and renewal of life insurance policies during the years when he engaged in the unincorporated business of being a general agent for an insurance company?

FINDINGS OF FACT

1. Petitioner, John P. Propis, timely filed New York State unincorporated business tax returns for the years 1966, 1967 and 1968.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1966, 1967 and 1968 was issued on March 16, 1970, against the taxpayer under File No. 8-12710880.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The taxpayer received commissions as an insurance salesman up until 1963 under a career contract with Northwestern Mutual Life Insurance Company. The taxpayer did not pay unincorporated business taxes upon this income as he correctly considered himself an employee pursuant to section 703(b) of the Tax Law.

5. In 1963, the taxpayer became, by contract, a general agent for Northwestern Mutual Life Insurance Company when the previous general agent retired. He continued to sell insurance under his career contract, but the agency he worked for was now named the John P. Propis Agency. Prior to 1963, the taxpayer, as a salesman, was subject to the supervision and control of Peter T. Allen, the then, general agent. After 1963, including the years in issue, the taxpayer, as an insurance salesman, was subject to his own supervision and control as he was at that time the general agent.

6. As a general agent, in 1966, 1967 and 1968, the taxpayer had approximately 20 salesmen under his supervision and control.

7. The taxpayer contended that though he was subject to and had paid unincorporated business taxes in 1966, 1967 and 1968 on the overriding commissions that he had received as general agent, he should not be subject to the unincorporated business taxes on

commissions earned from his activities as an insurance salesman during this period both from new policies sold by him and from the renewal of policies sold by him when he was a salesman for Peter T. Allen Agency. In the absence of any evidence to the contrary, it is presumed the renewal commissions flow through the John P. Propis Agency.

CONCLUSIONS OF LAW


A. The taxpayer, as a sales representative pursuant to section 703(f) of the Tax Law, is deemed engaged in an unincorporated business as he maintains an office, employs one or more assistants, and otherwise regularly carries on a business. The taxpayer's renewal commissions, from prior years, which come through his general agency are subject to unincorporated business tax. His activities as an insurance salesman for his own general agency, are so integrated and interrelated with his own business that the services constitute a part of the business he regularly conducts. Petition of Harold Smith, Decision of State Tax Commission, April 12, 1971.

B. The petition is denied and the determination of deficiency in unincorporated business taxes, is sustained.


C. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York  
March 8, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER