

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED C. SCHMITT

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) 1965, 1966 & :
1967.

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 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALFRED C. SCHMITT

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

Mr. Alfred C. Schmitt
65 Vegola Avenue
Cheektowaga, 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

7th day of February, 1974

Jesse S. Van Pelt

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED C. SCHMITT

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) 1965, 1966 & 1967

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 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Nathan A. Bork, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Nathan A. Bork, Esq.
Mattar, Bork, Mattar & D'Augustino
17 Court Street
Buffalo, 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

7th day of February, 1974.

J. S. Van Katen

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

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 7, 1974

Mr. Alfred C. Schmitt
65 Vegola Avenue
Cheektowaga, New York 14221

Dear Mr. Schmitt:

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
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 :
ALFRED C. SCHMITT : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1965, 1966 and 1967. :

Alfred C. Schmitt petitioned for a redetermination of a deficiency in unincorporated business taxes for the years 1965, 1966 and 1967. A formal hearing was held in the State Office Building, Buffalo, New York, on June 23, 1971, before L. Robert Leisner, Hearing Officer. The petitioner was represented by Nathan A. Bork, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the petitioner's activities in 1965, 1966 and 1967, as an insurance salesman, subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Alfred C. Schmitt, timely filed New York State income tax returns, but did not file unincorporated business tax returns for the years 1965, 1966 and 1967.
2. The taxpayer petitioned for a redetermination of a Notice of Deficiency in unincorporated business tax for the years 1965, 1966 and 1967, issued on June 30, 1969, under File No. 74048687.
3. Petitioner claimed that he was an employee of the Tabor Agency, Inc. and that as such he was not operating an unincorporated business.
4. Petitioner was a full time insurance agent with the Tabor Agency, Inc. The Tabor Agency was a general agent for the Traveler's

Insurance Company and petitioner was sub-agent for the Traveler's Insurance Company.

5. Petitioner was listed in the building directory under the Tabor Agency. His stationery was the Traveler's Insurance letter-head with a reference to the Tabor Agency. Petitioner's business phone listed the phone number of the Tabor Agency.

6. Petitioner was required to be in the Tabor Agency office five days a week and to work eight hours a day.

7. Petitioner was required to let the Agency know his whereabouts in the event of his absence. The Agency answered petitioner's phone calls. He was required to call in by phone regularly to let the Agency know his whereabouts and to answer his incoming calls. He was required to check in and out of the office at all times. If not in for a day, he was required to let the Agency know his whereabouts.

8. He was provided with a desk by the Tabor Agency and the location of the desk was assigned by the Tabor Agency. The petitioner was furnished a secretary whose salary was paid by the Tabor Agency, although certain amounts were withheld by Tabor for application to the secretary's salary.

9. Petitioner was required to attend sales meetings every Monday morning. He was instructed how to sell insurance, what his quotas were and what was expected of him. Petitioner was subject to established production standards. He was required to sell a certain amount of insurance in order to keep his hospitalization in a group life insurance in effect.

10. Petitioner was required to sell insurance solely for the Traveler's Insurance Company, except where permission was given to sell insurance for types of risks not covered by the Company or risks declined by it. Only when the Tabor Agency had specifically

given its permission after consultation did the petitioner direct his sales through Exchange Mutual Insurance Company or a very small amount through the Insurance Company of North America.

11. Petitioner had no withholding of income tax or social security tax.

12. In 1965, 1966 and 1967, petitioner's total net income was \$10,383.08, \$12,722.17 and \$14,855.50 respectively. Petitioner's earnings from companies other than Traveler's Insurance Company was \$2,318.21, \$4,112.32 and \$4,267.25, respectively.

CONCLUSIONS OF LAW

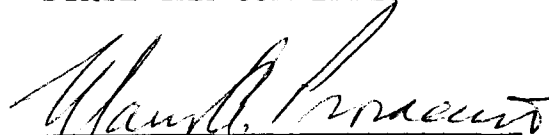
A. Petitioner's activities as a sub-agent and insurance salesman for the Traveler's Insurance Company were not subject to unincorporated business tax.

B. The income petitioner derived from sales of insurance companies other than Traveler's Insurance Company was not great enough to be taxable under the unincorporated business tax law.

C. The petition of Alfred C. Schmitt is sustained and it is determined that he has no deficiency in unincorporated business tax for the years 1965, 1966 and 1967.

DATED: Albany, New York
February 7, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER