

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT F. and ELIZABETH BOSHART :

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) 1967 through :
1971.

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 18th day of December , 1975 , she served the within
Notice of Decision ~~FOR ELIZABETH BOSHART~~ by (certified) mail upon ROBERT F. and

ELIZABETH BOSHART ~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Robert F. Boshart
5560 Woodlawn Avenue
Lowville, 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

18th day of December , 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT F. and ELIZABETH BOSHART

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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) 1967 through :
1971.

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 18th day of December, 1975, she served the within

Notice of Decision ~~XXXXXX XXXXXX~~ by (certified) mail upon DONALD M. HUNT, 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: Donald M. Hunt, C.P.A.


Hunt & Hunt
5564 Woodlawn Avenue
Lowville, New York 13367

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

18th day of December, 1975







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

DATED: Albany, New York
December 18, 1975

~~XXXXXXXXXX~~
(518)457-3850

Mr. and Mrs. Robert F. Boshart
5560 Woodlawn Avenue
Lowville, New York

Dear Mr. and Mrs. Boshart:

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,

L. ROBERT LEISNER
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT F. and ELIZABETH BOSHART :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1967 through 1971. :

DECISION

Petitioners, Robert F. and Elizabeth Boshart, 5560 Woodlawn Avenue, Lowville, New York, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1967 through 1971.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 207 Genesee Street, Utica, New York, on June 18, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Donald M. Hunt, of Hunt & Hunt, C.P.A. and the Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. of counsel and Robert C. Robertaccio, Tax Examiner.

ISSUES

I. The first issue is whether petitioner, Robert F. Boshart's activities as a farm insurance agent constituted the carrying on of an unincorporated business.

II. The second issue is whether interest on money loaned subsequent to the sale of an unincorporated business, to the purchaser of said business, is subject to taxation, under Article 23, section 705 of the Tax Law, as gross income derived from the liquidation of an unincorporated business.

FINDINGS OF FACT

1. Petitioners, Robert F. and Elizabeth Boshart, timely filed New York State combined income tax returns for the years 1967 through 1971. They also filed an unincorporated business tax return for the year 1967.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1967 and 1968 was issued on August 27, 1973, against the taxpayers under File No. 8-12202277. A second Notice of Determination of deficiencies in unincorporated business taxes for the years 1969, 1970 and 1971 was issued on August 27, 1973, against the taxpayers under File No. 1-78830738.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. Petitioner, Robert F. Boshart, was a member of the Board of Directors of the North Country Cooperative Insurance Company, hereinafter referred to as North Country Cooperative, during the years 1967 through 1970. He received no compensation for this position. Petitioner also held the office of company vice-president during the years in question. As vice-president he received a

salary of \$400 a year, from which North Country Cooperative withheld taxes. His duties as vice-president consisted of attending Board of Directors or Executive Committee meetings which were held about once every three months. The business that had transpired since the previous meeting, plus any new business would be discussed at this time.

5. During the years in question, other than the salary he received for being vice-president of North Country Cooperative, petitioner's income was derived from his occupation as a non-financed casualty insurance agent, selling for North Country Cooperative, and occasionally placing a policy with Oswego County Mutual. No deductions for Federal or state income tax or social security payments were made by the company from the taxpayer's commission earnings from such policies. Neither did he receive any form of unemployment insurance or workmen's compensation benefits, nor was he a member of any pension plan.

6. While petitioner had no written contract with North Country Cooperative, he did have an agent's certificate which licensed him to sell only in ten counties. As a matter of practice, he sold approximately 95% of his policies in Lewis County where he resided. Petitioner was also an insurance adjuster during the years in question. On all but the smallest losses, petitioner first was required by North Country Cooperative to report any claims made by one of its policyholders, and then to await advice as to whether he should settle the claim or wait for another adjuster.

7. Insurance policies the petitioner wrote for North Country Cooperative were submitted directly to the main office on company application forms. Policy payments were also usually made directly to the home office. Petitioner maintained no separate bank account for his insurance agent activities, with the exception of a holding account used to deposit policy payments made directly to him instead of to the main North Country Cooperative office. Occasionally, North Country Cooperative would sent out letters of instruction to its agents concerning company policy. North Country Cooperative did not provide petitioner with any list of potential customers to contact, nor did they reimburse him for any business expense he incurred. During the years in question, petitioner worked from his home, without a secretary or help.

8. North Country Cooperative is a small New York State farm insurance cooperative in rural northern New York.

9. On August 1, 1968, petitioner, Robert F. Boshart, sold farm property he had previously maintained as an unincorporated business. The sale was under a land contract bearing interest at six percent to be paid by assignment of twenty-five percent of the milk proceeds after a ten thousand dollar down payment. Title remained in the petitioner's name. On three occasions subsequent to the sale of his farm, petitioner lent money in the sums of \$6,000, \$10,000 and \$6,000 at 6% interest to the purchaser of said farm. These expenditures were used in the furtherance of the unincorporated farm business. No separate agreement was written concerning these subsequent loans. Instead, these amounts were

simply added to the balance of the unpaid sale price of the farm. Petitioner's uncontradicted testimony indicates that he acted solely as a holder of money at interest and had nothing to do with the farm work itself.

CONCLUSIONS OF LAW

A. The taxpayer is an employee within the meaning of section 703(b) of the Tax Law and his income as a non-financed casualty insurance agent for North Country Cooperative Insurance is not subject to unincorporated business tax under Article 23 of the Tax Law. While North Country Cooperative is a much smaller insurance company than the State Farm Insurance companies, this case falls within the rule of Matter of Petition of O'Kane, Decision of the State Tax Commission, July 20, 1967, governing State Farm Insurance Company; Matter of Edward and Evelyn Shea, Decision of State Tax Commission, September 23, 1968. Lampel v. Procaccino, 46 A.D. 2d 966, 362 N.Y.S. 2d 58.

B. The interest on money loaned subsequent to the sale of petitioner's farm, which constituted separate transactions from said sale, is considered capital gain made on personal funds, not income resulting from the liquidation of an unincorporated business.

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C. The deficiencies are redetermined and are modified by the above allowances. In all other respects, the deficiencies are sustained and the taxpayer's petition is denied.

DATED: Albany, New York
December 18, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER