

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD K. DAVIS

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) 1961, 1962 & 1963.

State of New York  
County of Albany

Katherine D. Manly, 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 14th day of March, 1975, she served the within  
Notice of Decision (~~xxx Deletion xxx~~) by (certified) mail upon Arnold K.

Davis ~~xxx xxx xxx xxx~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Arnold K. Davis  
70 East 77th Street  
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 ~~xxx representative~~  
~~xxx~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~xxx representative of the~~ petitioner.

Sworn to before me this

14th day of March, 1975.

Janet Mack

Katherine D. Manly



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

~~Saul Hecksman, Acting President~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
March 14, 1975

Mr. Arnold K. Davis  
70 East 77th Street  
New York, New York

Dear Mr. Davis:

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

Please take further notice that pursuant to  
Section (g) **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,

  
**Paul B. Coburn**

HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ARNOLD K. DAVIS	:	DECISION
for Redetermination of Deficiency of	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1961, 1962 and 1963.	:	

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Petitioner, Arnold K. Davis, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961, 1962 and 1963. (File Nos. 1-7941669 and 3-7820805). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on November 18, 1970 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq. of counsel).

FINDINGS OF FACT

1. Petitioner, Arnold K. Davis and his wife filed New York State Combined Income Tax Returns for the years 1961, 1962 and 1963. He did not file any unincorporated business tax returns for said years.

2. On October 11, 1965 the Income Tax Bureau issued two statements of audit changes against petitioner, Arnold K. Davis, imposing unincorporated business tax for the years 1961, 1962 and 1963 upon his income as an independent insurance broker upon the grounds that said business activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a Notice of Deficiency for the year 1961 in the sum of \$598.95 and a Notice of Deficiency for the years 1962 and 1963 in the sum of \$1,697.83.



3. During the years 1961, 1962 and 1963, petitioner Arnold K. Davis, was a life insurance sales agent for The Northwestern Mutual Life Insurance Company pursuant to various written agreements with the general agent. He was a member of its pension plan and profit sharing trust. He was subject to company established production standards and rules for soliciting business. The company withheld social security tax but did not withhold Federal or New York State income tax from the commissions paid to him. It supplied him with sales materials. He was entitled to persistency renewals on policies he wrote as long as he remained an agent of the company.

4. Petitioner, Arnold K. Davis, pursuant to the contract with the general agent of The Northwestern Mutual Life Insurance Company, was not allowed to place life insurance with other companies without the consent of Northwestern. It insisted that the risk be first offered to it and if it did not accept the insurance he could then place it with other life insurance companies. Northwestern has a policy of only accepting life insurance business from its own agents. During the years in issue it only handled standard life insurance. It did not handle group or other specialized kinds of life insurance and therefore, such insurance had to be placed by petitioner with other life insurance companies. He developed his own clients. The company did not provide him with leads. There was no particular allocation of his time spent soliciting insurance.

5. During the years 1961, 1962 and 1963, the general agent for The Northwestern Mutual Life Insurance Company maintained an office at 386 Fourth Avenue in New York City. Petitioner, Arnold K. Davis, had a desk available there for his use. He also attended sales meetings held there by the general agent. His name was listed on the building directory as a sales agent for Northwestern. In corresponding with clients he used company letterheads.

6. During the years 1961, 1962 and 1963, petitioner also maintained an office for the sale of life insurance at 90 John Street in New York City, and also was the president, director and owner of Arnold K. Davis Co., Inc., an insurance brokerage firm that handled all types of general insurance at same offices at said 90 John Street, New York City.

3. The first of these is the fact that the company has been operating in the United States since 1900, and has a long and successful record. The second is the fact that the company has a large and growing business in the United States, and is well known to the public. The third is the fact that the company has a strong financial position, and is able to meet its obligations. The fourth is the fact that the company has a good reputation, and is respected by the public. The fifth is the fact that the company has a large and experienced management team, and is able to handle any situation. The sixth is the fact that the company has a good working relationship with the government, and is able to obtain the necessary permits and licenses. The seventh is the fact that the company has a good working relationship with the public, and is able to provide the necessary services. The eighth is the fact that the company has a good working relationship with the press, and is able to provide the necessary information. The ninth is the fact that the company has a good working relationship with the labor union, and is able to provide the necessary benefits. The tenth is the fact that the company has a good working relationship with the community, and is able to provide the necessary support.

7. During the year 1961, petitioner received commissions from the sale of life insurance policies from five life insurance companies totalling \$20,549.99 of which, \$6,794.10 was received from the Northwestern Mutual Life Insurance Company. During the year 1962, he received similar commissions from the sale of life insurance policies from seven life insurance companies totalling \$31,356.45 of which \$16,056.75 was paid by Northwestern. During the year 1963, he received similar commissions totalling \$21,611.78 from the sale of life insurance policies from five insurance companies, of which \$11,728.14 was paid by Northwestern.

8. During the years 1961, 1962 and 1963, petitioner received salary as president, director and owner of 90% of the stock of Arnold K. Davis Co., Inc. of \$5200.00, \$7425.00, and \$7500.00, respectively. Federal income tax, New York State income tax and social security tax were withheld from his salary. He supervised the business activities of the company. His salary was not based upon percentage of the business he placed with the company.

9. On Schedule C. of his Federal income tax returns for 1961, 1962 and 1963, petitioner deducted expenses incurred in the solicitation of said business. He was not reimbursed by any life insurance company for expenses incurred in the solicitation of said business except for allowances as given by Northwestern Mutual Life Insurance Company towards telephone and stenographic services. He used the telephone and secretarial services of Arnold K. Davis Co., Inc.

#### CONCLUSIONS OF LAW

A. That petitioner was not a full time life insurance agent whose principal activity consisted of the solicitation of insurance for one company and he was an independent life insurance broker.

[illegible]

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the results of its investigation of the activities of the American Friends Service Committee in the Philippines.

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1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the "Black Panther Party" in the United States.

B. That the income received by petitioner, Arnold K. Davis, during the years 1961, 1962 and 1963 from The Northwestern Mutual Life Insurance Company and the other life insurance companies with whom he placed life insurance constituted receipts from his regular business as a life insurance broker and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of Section 703(b) of the Tax Law.

C. That the aforesaid activities of petitioner, Arnold K. Davis, during the years 1961, 1962 and 1963 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.

D. That the services rendered by petitioner, Arnold K. Davis, during the years 1961, 1962 and 1963 in connection with the general insurance business of Arnold K. Davis Co., Inc. was so integrated and interrelated with his activities in connection with his life insurance business as to constitute a part of a general insurance business regularly carried on by him and therefore the salary received by him from said Arnold K. Davis Co., Inc. was also subject to the imposition of unincorporated business tax in accordance with the meaning and intent of Section 703(b) of the Tax Law.

E. That the petition of Arnold K. Davis is denied and the notices of deficiency, dated October 11, 1965, are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

March 14, 1975

\_\_\_\_\_  
COMMISSIONER

*James H. Hensley*  
\_\_\_\_\_  
COMMISSIONER

*Milton H. Cohen*  
\_\_\_\_\_  
COMMISSIONER

that the income tax on the profits of the corporation for the year 1931, 1932 and 1933 was not paid by the corporation.

On January 1, 1934, the corporation was reorganized with a new charter and the name of the corporation was changed to the American Petroleum Corporation.

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