

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY K. GUTMANN

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) 16-A of the :
Tax Law for the Year(s) 1955, 1956, :
1957, 1959 and 1960.

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 25th day of March , 1975, she served the within
Notice of ~~Deficiency~~ (Determination) by ~~(certified)~~ mail upon HARRY K.

GUTMANN ~~(representative of the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Harry K. Gutmann
111 Dorchester Road
Scarsdale, 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 the)~~
~~xxx~~ 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

25th day of March , 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY K. GUTMANN

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) 16-A of the
Tax Law for the Year(s) 1955, 1956, :
1957, 1959 and 1960.

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 25th day of March, 1975, she served the within
Notice of ~~Decision (or~~ Determination) by ~~(Certified)~~ mail upon LEON WEISS, 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: Leon Weiss, C.P.A.
271 North Avenue
New Rochelle, 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

25th day of March, 1975.

Janet Mack

Katherine D. Manly



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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

STATE TAX COMMISSION
Saul Heckelman, Acting
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

DATED: Albany, New York
March 25, 1975

Mr. Harry K. Gutmann
111 Dorchester Road
Scarsdale, New York

Dear Mr. Gutmann:

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

Please take further notice that pursuant to
Section (s) **386j** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 days**
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,

Edward Rook
~~XXXXXXXXXXXX~~
SECRETARY TO STATE TAX COMMISSION

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

HARRY K. GUTMANN

DETERMINATION

for Revision or Refund of Unincorporated
Business Taxes under Article 16-A of the
Tax Law for the years 1955, 1956, 1957,
1959 and 1960.

Harry K. Gutmann, hereinafter referred to as taxpayer, having filed applications for revision or refund of unincorporated business income taxes assessed under Article 16 of the Tax Law for the years 1955, 1956, 1957 and 1959 and under Article 23 for the year 1960, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on February 28, 1967, before Vincent P. Molineaux, Hearing Officer, at which hearing taxpayer appeared personally, together with his representative, Leon Weiss, a certified public accountant, of 271 North Avenue, New Rochelle, New York, and the facts and records having been duly examined and considered by the State Tax Commission, it is hereby determined as follows:

FINDINGS OF FACT

1. That the taxpayer during the years 1955, 1956, 1957, 1959 and 1960 was a soliciting insurance agent for the Mutual Life Insurance Company of New York, hereinafter referred to as Mutual, and was also a soliciting insurance agent for other insurance companies; that he solicited all products sold by Mutual, which included life insurance, major health insurance, group insurance and pension insurance. He was required to submit all his insurance business to Mutual first, but when said company declined to

received, expenses and salaries paid by him, which books were his own property and he would not be required to turn over said books to Mutual if and when his relationship with such company was terminated.

5. That the taxpayer in his State income tax returns for the years 1955, 1956, 1957 and 1959 attached a schedule setting forth his receipts and expenses in connection with the operation of his business. Photostatic copies of each of these schedules are annexed hereto and made a part hereof.

6. That unincorporated business income taxes were duly and timely assessed on March 29, 1961 against the taxpayer under Article 16-A of the Tax Law for the year 1959 in the sum of \$728.88 by assessment numbered B845870; on August 29, 1961 for the year 1955 in the sum of \$540.69 by assessment numbered B977946, for the year 1956 in the sum of \$433.39 by assessment numbered B977947, and for the year 1957 in the sum of \$594.21 by assessment numbered B977948; and, under Article 23 of the Tax Law, for the year 1960, on November 10, 1961, in the sum of \$469.62 by assessment numbered B988372.

Upon the foregoing findings of fact and all of the evidence presented herein, the State Tax Commission hereby determines:

A. That Harry K. Gutmann, the taxpayer herein, was an independent contractor and not an employee of any of his principals; that his activities during the years 1955, 1956, 1957, 1959 and 1960 as a soliciting insurance salesman constituted the carrying on of an unincorporated business within the meaning and intent of Section 386 of the Tax Law and his net income from such activities for those years was subject to the unincorporated business tax

issue said policy or did not have the insurance applied for available, then he was given permission to place the business elsewhere; that he had licenses to write insurance for Mutual and other insurance companies.

2. That commissions were paid to him monthly for those policies solicited for Mutual based upon premiums paid thereon during the preceding month, which premiums were paid directly to Mutual except for the first premium which was collected by the taxpayer from the applicant at the time the policy was solicited and then turned over to Mutual by the taxpayer.

3. That Mutual supplied the taxpayer with free office, telephone service and some clerical and stenographic service in its office at 201 East 42nd Street, New York City; that the taxpayer supplemented the salary of the secretary assigned to him by regular payments which he estimated represented about one half of her income and that he made the customary deductions from her salary for income tax; that the general office furniture was furnished by Mutual, but taxpayer's desk was purchased by him; that taxpayer made expenditures out of his own personal funds for postage, for advertising, for traveling and for entertainment, and was not reimbursed by the company for any of these costs except for the annual or semi-annual occasions when he went to a convention or a meeting for Mutual; that the company exercised no control over the amount of expenses incurred by the taxpayer; and he was not required to spend any particular number of hours in Mutual's office.

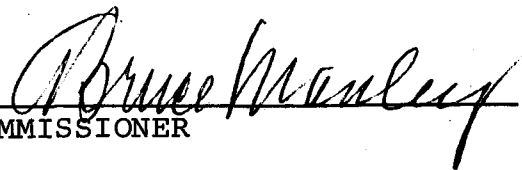
4. That taxpayer was not required to submit periodical activity reports or to report on visits to prospects other than prospects furnished through Mutual's direct-mail campaigns; that he maintained his own books of account reflecting gross commissions

imposed by Article 16-A and Article 23 of the Tax Law, respectively.

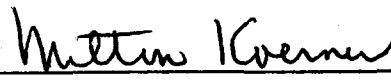
B. That the unincorporated business income taxes so assessed against the taxpayer, as set forth in Paragraph 6 hereof, are correct and do not include taxes or other charges which are not legally due and owing and that additional penalties and interest are to be imposed thereon pursuant to Section 376 of the Tax Law.

STATE TAX COMMISSION

COMMISSIONER



COMMISSIONER



COMMISSIONER

DATED: Albany, New York

March 25, 1975