

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD A. CHADWICK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~on Period(s)~~ :  
1968 - 1970

State of New York  
County of Albany

Jean Wager, 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 4th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Gerald A. Chadwick ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Gerald A. Chadwick  
149 Bennett Road  
Camillus, N.Y. 13031  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ 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

4th day of August, 1976.

Janet Trach

Jean Wager

STATE OF NEW YORK  
STATE TAX COMMISSION

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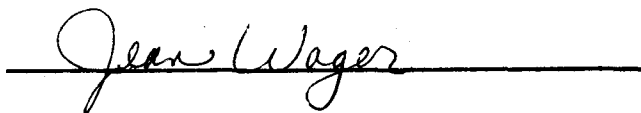
Jean Wager , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of August , 1976 , she served the within  
Notice of Decision by (certified) mail upon David A.  
Yaffee, Esq. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: David A. Yaffee, Esq.  
505 Larned Building  
Syracuse, N.Y. 13202  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) 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

4th day of August , 1976.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 4, 1976

TELEPHONE: (518) 457-3850

Mr. Gerald A. Chadwick  
149 Bennett Road  
Camillus, N.Y. 13031

Dear Mr. Chadwick:

Please take notice of the **Notice of 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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

*Paul B. Coburn*  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	DECISION
GERALD A. CHADWICK	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968 through 1970	:	

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Petitioner, Gerald A. Chadwick, 149 Bennett Road, Camillus, New York 13031, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968 through 1970. (File No. 0-54135652) A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on March 30, 1976 at 10:45 a.m. Petitioner appeared by Edward Green, Esq. and Kenneth Kadish, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the income received by petitioner, Gerald A. Chadwick, from the State Mutual Life Assurance Company of America, Worcester, Massachusetts, during the years 1968 through 1970 was subject to the unincorporated business tax.

II. Whether petitioner, Gerald A. Chadwick, had reasonable cause for failing to timely file unincorporated business tax returns for the years 1968 through 1970.

FINDINGS OF FACT

1. Petitioner, Gerald A. Chadwick, filed New York State income tax returns for the years 1968 through 1970. He did not file any New York State unincorporated business tax returns for said years.

2. On January 28, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Gerald A. Chadwick, imposing unincorporated business tax upon the income received by him from his activities as an insurance salesman during the years 1968 through 1970, upon the grounds that said activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law. Accordingly, it issued a Notice of Deficiency in the sum of \$1,781.49, plus penalty and interest of \$1,046.73 for a total of \$2,828.22.

3. The principal business activity of the petitioner, Gerald A. Chadwick, was the sale, administration and claim handling of group insurance programs for business clients located throughout the State. The income received was for commissions and fees from insurance companies underwriting the plans. He was licensed as an agent and broker by the New York State Insurance Department. He had an agreement with the State Mutual Life Assurance Company of America to act as their claim administrator in his area. His duties and services were enumerated in the agreement, and he was allowed to represent other insurance companies as well. His office equipment and telephone were located within his residence. These costs

were his responsibility and accordingly were deducted as business expenses from gross income on his tax returns. He had no employees. State Mutual Life Assurance Company of America did not deduct either social security payments or income tax from his commissions, nor was he covered in their group life, group medical, or pension benefits, which were available only to their career life agents. The State Mutual Life Assurance Company of America supplied him with stationery, business cards, and a post office box for mail.

4. The breakdown of insurance income of petitioner, Gerald A. Chadwick, by source, for the years in issue is as follows:

	<u>1968</u>	<u>1969</u>	<u>1970</u>
<u>Life and Health Insurance:</u>			
State Mutual Life Assurance			
Company of America	\$13,573.82	\$15,660.47	\$20,825.63
Aetna	-0-	699.00	732.27
CNA/Insurance	1,701.39	1,998.90	1,345.94
John Hancock	3,796.74	1,400.91	1,074.50
Prudential	4,461.69	3,644.62	3,504.87
Travelers	1,054.75	-0-	867.10
Other Carriers	926.31	980.23	692.06
<u>General Insurance:</u>			
Property and Casualty	<u>72.76</u>	<u>937.31</u>	<u>-0-</u>
Total	\$25,587.46	\$25,322.37	\$29,042.37

5. Petitioner, Gerald A. Chadwick, in prior years was a full-time salaried employee of an insurance agency owned by his late brother. Subsequently, in 1964 to 1967, he was employed by State Mutual Life Assurance Company of America and then John Hancock Mutual Life Insurance Company as a full-time salaried employee.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Gerald A. Chadwick, during the years 1968 through 1970 from the State Mutual Life Assurance Company of America, with whom he placed insurance and/or administered their claims, constituted income from his regular business, as an insurance salesman, 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.

B. That the aforesaid activities of the petitioner, Gerald A. Chadwick, during the years 1968 through 1970 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

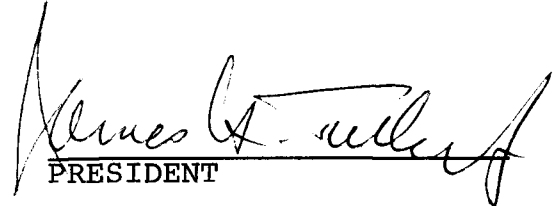
C. That inasmuch as petitioner, Gerald A. Chadwick, was a full-time employee in prior years to those in issue, 1968 through 1970, and had not previously been required to file an unincorporated business tax return, under the circumstances the penalty assessed pursuant to section 685(a) of the Tax Law is cancelled.

D. That the petition of Gerald A. Chadwick is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1968 through 1970; that the Income Tax Bureau is hereby directed to accordingly modify the

Notice of Deficiency issued January 28, 1974; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
August 4, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER