

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL HIRTENSTEIN

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) ~~or Period(s)~~ 1969. :

State of New York  
County of Albany

Bruce Batchelor , 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 21st day of December , 1976, she served the within  
Notice of Decision by (certified) mail upon Daniel Hirtenstein

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. Daniel Hirtenstein  
85-15 Main Street  
Jamaica, New York 11435

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

21st day of December , 1976.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL HIRTENSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year (x) ~~1968~~ 1969. :

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 21st day of December, 1976, he served the within  
Notice of Decision by (certified) mail upon Harold H. Rosenblum

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Harold H. Rosenblum, CPA  
846 Wenwood Drive  
East Meadow, New York 11554

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

21st day of December, 1976.

Bruce Batchelor

Janet Mack



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

December 21, 1976

TELEPHONE: (518) **457-2850**

Mr. Daniel Hirstenstein  
85-15 Main Street  
Jamaica, New York 11435

Dear Mr. Hirstenstein:

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

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

*Frank J. Puccio*  
**Frank J. Puccio**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
DANIEL HIRTENSTEIN	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1969.	:	

---

Petitioner, Daniel Hirtenstein, 85-15 Main Street, Jamaica, New York 11435, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for 1969. (File No. 9-32022496). A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1976. Petitioner appeared by Harold H. Rosenblum, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William H. Fox, Esq. of counsel).

ISSUE

Was the petitioner engaged in an unincorporated business with respect to the sale of life insurance for Mutual Benefit Life Insurance Company in the year 1969?

FINDINGS OF FACT

1. On March 23, 1973, the Income Tax Bureau issued a Notice of Deficiency against the petitioner for the year 1969 in the amount of \$979.20, including tax and interest, based upon a finding that petitioner's sales and commission income received from his activities as a life insurance agent with Mutual Benefit Life Insurance Company were subject to New York State unincorporated business tax.

2. Petitioner, Daniel Hirtenstein, was an insurance agent associated with the Mutual Benefit Life Insurance Company of Newark, New Jersey. In addition, petitioner was the sole owner of an insurance agency known as Hirtenstein Associates.

3. Petitioner's activities, with respect to Mutual Benefit Life Insurance Company, were limited to the sale of life insurance. He was required to attend agency meetings, usually held on Mondays, at the company offices in New Jersey. He was free to exercise his own judgment as to the persons from whom he could solicit business on behalf of Mutual Benefit, and the time, place and manner of such solicitation. While he did not maintain an office in New Jersey on his own, office space and secretarial services were available to petitioner at Mutual Benefit's office at no charge to him.

4. Petitioner's income from Mutual Benefit Life Insurance Company was entirely in the form of commissions. He was not given a regular withholding statement but was supplied with a schedule

of earnings at the end of the year. No deductions were made from his commissions for income taxes, hospitalization, pensions or disability insurance. Petitioner reported \$7,800.00 as "wages, salaries, tips, etc." on his New York State income tax resident return for 1969. This amount was subject to F.I.C.A. tax. Petitioner did not explain why Mutual Benefit withheld F.I.C.A. tax but did not make any of the other payroll deductions generally associated with an employment relationship.

5. For the year 1969, the petitioner received \$17,652.89 from Mutual Benefit Life Insurance Company as commission income from the sale of life insurance. As noted above, he reported \$7,800.00 of said amount as salary on his 1969 New York return and he also reported \$9,852.89 of said amount as other income in the form of "pensions and annuities, rents and royalties, partnerships, estates or trusts, etc." In addition, during 1969, the petitioner, through his business known as Hirtenstein Associates, received gross commission income of \$54,664.57 from various companies for the sale of insurance, other than life insurance. He reported a net profit of \$9,507.32 from such business operations on a 1969 New York State unincorporated business tax return.

6. The commission income received from Mutual Benefit Life Insurance Company was deposited in the Hirtenstein Associates bank account, but such commission income was not included in gross commissions reported for 1969 unincorporated business tax purposes.

CONCLUSIONS OF LAW

A. That the petitioner was not a full time life insurance soliciting agent, since in addition to selling life insurance for Mutual Benefit Life Insurance Company, he conducted an on going insurance business, through which he sold insurance (other than life insurance) for various other companies.

B. That the petitioner's principal activity was not the solicitation of life insurance sales for Mutual Benefit Life Insurance Company, but rather the solicitation of insurance sales for various companies as evidenced by the fact that commissions from Mutual Benefit were only \$17,652.89, whereas the commissions from other insurance sales amounted to \$54,064.57.

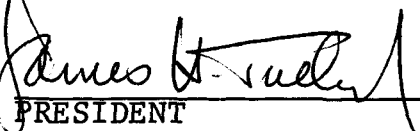
C. That furthermore, the petitioner has not shown that his sales activities were subject to such general and particular supervision by Mutual Benefit Life Insurance Company as would prove the existence of an employer/employee relationship.

D. That the petitioner is subject to unincorporated business tax on all insurance commissions received during the year 1969.

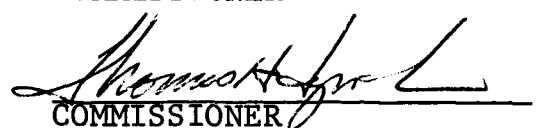
E. That the petition of Daniel Hirtenstein is denied and the Notice of Deficiency dated March 26, 1973 is sustained.

DATED: Albany, New York  
December 21, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER