

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT RELPH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(*) 23 of the :
Tax Law for the Year(s) ~~xx Period(s)~~ :
1968 through 1972.

State of New York
County of Albany

Carmen Mottolese, 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 August, 1976, she served the within Notice of Decision by (certified) mail upon Robert Relph ~~(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. Robert Relph
150 Howe Street
Black River, New York 13612
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 ~~xx representative~~
~~xx of the~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~xx representative of the~~ petitioner.

Sworn to before me this

25th day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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ROBERT RELPH

For a Redetermination of a Deficiency or :
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Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968 through 1972.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Carmen Mottolese, 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 August, 1976, she served the within Notice of Decision by (certified) mail upon William J. McClusky, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William J. McClusky, Esq.
334 Woolworth Building
Watertown, New York 13601

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

25th day of August, 1976.

Carmen Mottolese

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

August 25, 1976

TELEPHONE: (516) **457-3850**

Mr. Robert Relph
150 Howe Street
Black River, New York 13612

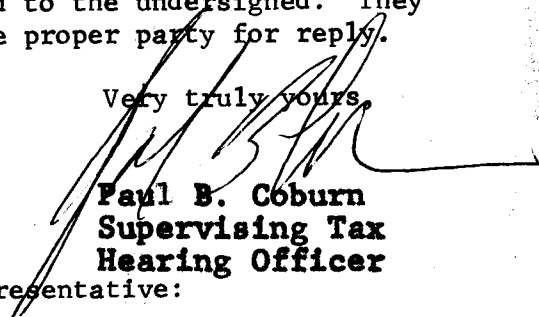
Dear Mr. Relph:

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

Please take further notice that pursuant to
Section ~~682~~ **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
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ROBERT RELPH :

DECISION

For Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years :
1968 through 1972.

Petitioner, Robert Relph, residing at 150 Howe Street, Black River, New York 13612, has filed a petition for redetermination of a deficiency or for a refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968 through 1972. (File No. 01796).

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Watertown, New York, on October 23, 1975, at 9:30 A.M. Petitioner appeared by William J. McClusky, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Whether petitioner, Robert Relph, was exempt from the unincorporated business tax for the years 1968 through 1972, as an employee of Bankers Security Life Insurance Society?

II. Whether petitioner, Robert Relph, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968 through 1972?

FINDINGS OF FACT

1. Petitioner, Robert Relph, failed to file unincorporated business tax returns for the years 1968 through 1972.

2. On February 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert Relph, for unincorporated business tax due for the years 1968 through 1972. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency of \$1,719.64 was issued against petitioner.

3. Petitioner, Robert Relph, is a general life insurance agent for the Bankers Security Insurance Society. Petitioner has been associated with Bankers Security since September, 1965. Since said date, he has worked for the company under the prescriptions of a "general agent's contract".

4. Under the terms of the contract, petitioner, Robert Relph, was not permitted to sell insurance for other companies unless Bankers Security first rejected a customer's business. Petitioner did not sell insurance policies for any other company during the years in controversy. The territory in which petitioner was to solicit customers was prescribed in the contract. He had complete discretion as to the hours, days and weeks he worked. From September, 1965, through August 31, 1970, petitioner was paid \$500.00 per month. However, the contract stipulated that if petitioner failed to write certain quotas in annual premiums, his contract would be voided and his rights to all future renewal commissions would be forfeited.

5. Petitioner, Robert Relph, was a member of a general agents advisory council. The council made recommendations concerning the issuance of new insurance policies and the promulgation of new administrative procedures.

6. Petitioner, Robert Relph, was required to recruit and train other soliciting agents. Most of these agents were independent property and casualty agents who sold policies for numerous companies. Agents solicited by petitioner were subject to approval by Bankers Security. Petitioner received override commissions from agents successfully solicited. The contract of petitioner specified:

"The performance of agents, solicitors and employees as well as their compensation shall be wholly the responsibility of the General Agent (emphasis added) but the manner of their performance shall be satisfactory to the society. The society may prescribe from time to time rules for the conduct of the agency and may require the General Agent to terminate the appointment of any of the agents and solicitors appointed by him. Neither the prescription of such rules nor the reservation of the right to require termination of the appointment of an agent or solicitor shall be deemed to create the relationship of employer and employee (emphasis added) between the society and General Agent or any of the agents, solicitors or employees of the General Agent."

Petitioner, initially paid the agents' commissions from his personal account after he received the required funds from Bankers Security. Later the company adopted the policy of sending a check directly to petitioner in the agents name, to be forwarded by petitioner to the agent.

7. Petitioner, Robert Relph, was also responsible for unit supervisors. Unit supervisors recruited and trained soliciting agents and supervised their sales efforts. The unit supervisor signed an "Unit Supervisor's Agreement" with petitioner in his capacity as general agent. The contract, drafted by Bankers Security

stipulated:

"As compensation for his service the General Agent (emphasis added) will pay the Unit Supervisor a salary consisting of a fixed payment of \$200.00 per month and 20% of the first year commission paid to members of the Supervisor's Unit....

The acknowledgment of this agreement by Bankers Security Life Insurance Society and the requirement therein for observance of the rules and regulations of Bankers Security Life Insurance Society shall not be deemed to create any relationship of employer and employee or master or servant or agent or principal between the Unit Supervisor and Bankers Security Life Insurance Society and said society shall not be virtue of this agreement incur any liability for compensation to the Unit Supervisor".

Bankers Security would pay petitioner for the Unit Supervisor's remuneration. Subsequently, petitioner would write a personal check for the same amount to the Unit Supervisor. The Unit Supervisor received an additional \$500.00 per month; \$250.00 as a fixed payment paid by petitioner for which he was subsequently reimbursed; \$250.00 as a loan on future commissions paid personally by petitioner.

8. Petitioner, Robert Relph, was reimbursed for the office and traveling expenses, secretarial and clerical help, telephone service and expenses incurred in the procurement of insurance business. Initially, he paid for these items and subsequently filed an expense reimbursement allowance sheet. Petitioner only obtained reimbursement from the percentage of business he brought to the company as computed from the tables contained in the contract.

9. Bankers Security Life Insurance Society contributed to a group-life hospitalization plan for the petitioner, Robert Relph. The company did not deduct Federal and New York State income taxes, social security, workmen's compensation or unemployment insurance from petitioner's remuneration.

10. Petitioner, Robert Relph, was advised by his counsel that he was not required to file New York State unincorporated business tax returns for the years 1968 through 1972.

CONCLUSIONS OF LAW

A. That Bankers Life Insurance Society did not exert sufficient control and supervision over the activities of petitioner, Robert Relph, to permit the designation of petitioner as an employee within the meaning of Section 703(b) of the Tax Law. Therefore, petitioner's activities as a general agent constituted the carrying on of an unincorporated business within the meaning and intent of Section 703(a) of the Tax Law.

B. That petitioner, Robert Relph, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968 through 1972, and therefore, the penalties assessed pursuant to former section 685(a) and sections 685(a)(1) and 685(a)(2) of the Tax Law are waived

C. That the petition of Robert Relph is granted to the extent of cancelling the penalties imposed pursuant to former section 685(a) and sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1968 through 1972 in the sum of \$430.77; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 23, 1974;

and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 25, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER