

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

G. GUSTAVE STEINER

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(s) ~~XXXXXX~~ :
1966 and 1967.

State of New York
County of Albany

Catherine Steele, 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 6th day of August, 1976, she served the within
Notice of Decision by (certified) mail upon G. Gustave Steiner

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. G. Gustave Steiner
c/o Mrs. G. Gustave Steiner
520-B Portsmith Drive
Lakewood, New Jersey
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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

6th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

G. GUSTAVE STEINER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(3)~~ 23 of the :
Tax Law for the Year(s) ~~1966 and 1967~~ :
1966 and 1967.

State of New York
County of Albany

Catherine Steele, 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 6th day of August, 1976, she served the within
Notice of Decision by (certified) mail upon John E. Brandow, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John E. Brandow, Esq.
O'Connell and Aronowitz, P.C.
100 State Street
Albany, New York 12207
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

6th day of August, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 6, 1976

TELEPHONE: (518) **457-3850**

Mr. G. Gustave Steiner
c/o Mrs. G. Gustave Steiner
520-B Portsmith Drive
Lakewood, New Jersey

Dear Mr. Steiner:

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

Please take further notice that pursuant to
Section ~~201~~ **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
G. GUSTAVE STEINER
for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Years 1966 and 1967.

DECISION

Petitioner, G. Gustave Steiner, c/o Mrs. G. Gustave Steiner, 520-B Portsmith Drive, Lakewood, New Jersey, 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 1966 and 1967. (File 72204154). A formal hearing was held before Nigel G. Wright, Esq., Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on November 5, 1975, at 2 p.m. Petitioner appeared by O'Connell and Aronowitz, P.C. (John E. Brandow, Esq., of counsel). The Income Tax Bureau appeared by Peter J. Crotty, Jr., Esq. (James A. Scott, Esq. of counsel).

ISSUE

Was the income received by petitioner, G. Gustave Steiner, from the Aetna Life Insurance Company during the years 1966 and 1967 subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, G. Gustave Steiner, filed New York State income tax returns for the years 1966 and 1967. He did not file a New York State unincorporated business tax return for 1966, but did file an unincorporated business tax return for 1967, omitting therefrom income received from Aetna Life Insurance Company.

2. On January 27, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, G. Gustave Steiner, imposing unincorporated business tax upon the income received by him from his activities as an insurance salesman during the years 1966 and 1967, 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, and accordingly it issued a Notice of Deficiency in the sum of \$2,145.62.

3. During the year 1966, petitioner, G. Gustave Steiner, was employed by and was the sole stockholder of G. Gustave Steiner and Company, a general insurance company, that he sold during said year to the Aetna Life Insurance Company of Hartford, Connecticut. He continued with Aetna Life Insurance Company with the same agency agreement he had since 1950. He was required to place all life insurance business with the Aetna Life Insurance Company on a first trial basis and consent had to be given by the general agent

for placement of business with other companies. He continued to carry on from his own office at 80 Fifth Avenue, New York, New York, the former location of G. Gustave Steiner and Company. There was a direct tie-line phone between the offices. He was under the general supervision of the general agent and supervisors of Aetna Life Insurance Company. His production records, awards in contests, and qualifications for the company convention were handled the same way as other full time agents of the company. His part time secretarial help was partially reimbursed by Aetna Life Insurance Company. He was a participant in its group comprehensive medical plan. In 1966, he earned \$14,751.00 from Aetna Life Insurance Company and approximately \$20,000.00 from his own company and business. Aetna Life Insurance Company did not withhold Federal or New York State income taxes from commissions paid to him during said year.

4. In 1967, petitioner, G. Gustave Steiner, earned \$17,273.86 from Aetna Life Insurance Company. He netted \$25,868.00 from his own insurance business upon which he paid an unincorporated business tax of \$613.66. He did not receive credit for said payment in the Statement of Audit Changes. Federal and New York State income taxes were not withheld from his commissions by the Aetna Life Insurance Company in 1967.

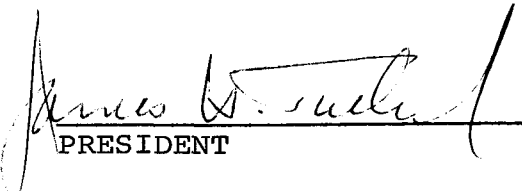
CONCLUSIONS OF LAW

A. That the income received by petitioner, G. Gustave Steiner, during the years 1966 and 1967 from the Aetna Life Insurance Company with whom he placed insurance 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 petition of G. Gustave Steiner is granted to the extent of crediting the amount of \$613.66 already having been paid; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 27, 1969; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 6, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER