

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY L. WOLKENBERG

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) 16A of the :
Tax Law for the Year(s) ~~xxxPeriod(s)~~ :
1952 through 1956.

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 14th day of September, 1976, she served the within Notice of Determination by (certified) mail upon Sidney L. Wolkenberg

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Sidney L. Wolkenberg
500 Fifth Avenue
New York, New York 10036

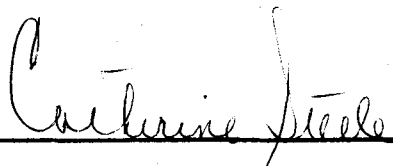
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ ~~xxxxxxx~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ ~~xxxxxxx~~ petitioner.

Sworn to before me this

14th day of September, 1976.







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

September 14, 1976

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

Dear Mr. Wolkenberg:

Please take further notice that pursuant to Section ~~705~~ **386(j)** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **90 days** from the date of this notice.

Very truly yours,

Enc.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX:

TA-1.12 (1/76)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
SIDNEY L. WOLKENBERG	:	DETERMINATION
for Revision or for Refund of Unincorporated	:	
Business Taxes under Article 16A of the Tax	:	
Law for the Years 1952 through 1956.	:	

Sidney L. Wolkenberg filed applications under section 374 of the Tax Law for revision of additional unincorporated business taxes assessed under Article 16A of the Tax Law for the years 1952 through 1956 and thereafter paid in full. Such applications were denied and applicant demanded a hearing. A hearing was duly held on January 28, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant appeared in person and without a representative and the Income Tax Bureau appeared by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the applicant, an insurance solicitor, is subject to unincorporated business tax under Article 16A of the Tax Law or whether he is an employee and so not subject to tax.

FINDINGS OF FACT

1. Petitioner is a soliciting agent of Union Central Life Insurance Company. The company has headquarters in Cincinnati, Ohio. It has a general agency, The Charles B. Knight Agency, Inc., located at 225 Broadway, New York City. Knight has from 20 to 40 agents working from its office. From 1952 through 1956, petitioner regularly wrote \$1,000,000.00 of insurance a year.

2. Petitioner's commissions were primarily from Union Central, a secondary source of commissions was Guardian Life Insurance Co., which wrote pension plans, a line of business in which Union Central did not engage. Petitioner typically received first year commissions from 6 to 10 other companies each year and renewal commissions from 10 to 15 additional companies. In 1955 his commissions from sources other than Union Central amounted to \$17,477.30. He estimates that 25% of his total expenses is allocable to this business and that amount, after considering disallowed deductions, is found to be \$4,576.31.

3. Petitioner had a written contract that had a term of 10 years from January 1, 1949. It stated the following: "Within the territory hereinbefore described the Agent shall be free to exercise his own judgment as to the persons from whom he will solicit insurance and the time and place of solicitation, but the Company and/or the Manager may from time to time prescribe regulations by means of the Agents Manual or otherwise, respecting the conduct of the business covered hereby, not interfering with such freedom of action, which regulations shall be observed and conformed to by the Agent. Nothing herein shall be construed to create the relation of employer and employee between the Company and the Agent or between the Manager and the Agent." The contract also provided the following: "The Company will furnish stationery and its own publications free of charge. The agent shall keep records of business done and such records shall be the property of the Company and shall be open to inspection by the Company. The agreement may be terminated on notice by either party. The Agent's compensation is based on up to 50% of the first year premiums collected plus renewal commissions for 9 years if at least \$50,000.00 of business was done in the year. The right to renewal commissions survived the death of the agent or the termination of the agreement."

4. Petitioner also entered into a "persistency agreement" with the company. That agreement stated that: "The Agent will act exclusively for the Company and/or the Manager so far as to tender first to the Company all applications of insurance obtained by him which are acceptable under its rules. On policies written in years when the Agent writes \$50,000.00 or more in new insurance the renewal commissions are in the amount of 3% to 5% on the second to fifth year premiums. The right to these premiums survives the death of the Agent or the termination of the contract. If the Agent qualifies by the amount of business in force or by length of service with the Company, and if he has continued to place with the Company all applications for life insurance acceptable under its rules, then an additional persistency allowance is payable to him of 2% to 5% on premiums after the fifth year. If the Agent dies while under contract, the persistency allowances continue for two years."

5. Social security was withheld from petitioner's compensation. Income tax and disability insurance were not withheld.

6. Petitioner was required to attend sales meetings at the Knight Agency.

7. Petitioner leased a part of a room in 225 Broadway from the Knight Agency at a stipulated rental. He employed a secretary. Petitioner had an agreement with the Knight Agency for an expense allowance measured by 10% of the first \$25,000.00 of premiums and 15% of any excess premiums. In most years this compensated him for all, or almost all, of his office expenses.

8. Petitioner was a member of the partnership of Wolkenberg & Warshaw, which operated from 225 Broadway. This was a general insurance business. Mr. Warshaw devoted all his time to that business selling property and casualty insurance exclusively and drew a salary as well as 50% of the profits. Petitioner did not devote much time to this business and drew no salary. Generally,

Mr. Warshaw referred life insurance business to petitioner and petitioner referred general insurance business to Mr. Warshaw. The partnership employed its own secretaries and other office help. Petitioner asserts that the company encouraged a general insurance business because it acts as a feeder for the life insurance business and protects life insurance clients from outside competition. Petitioner carried two business cards, one for the partnership and one for his own life insurance business. In most years petitioner received \$6,000.00 to \$9,000.00 from the partnership. These sums are not included in the assessments.

9. The assessments are in the following amounts:

1952 - \$136.74	1955 - \$ 382.37
1953 - \$ 90.15	1956 - \$1,057.49
1954 - \$337.58	

No interest is included in these amounts. The assessments for 1954, 1955 and 1956, include amounts increased by the disallowance of certain business deductions on a federal audit which are not contested.

CONCLUSIONS OF LAW

Petitioner is an employee of Union Central Life Insurance Company and is not subject to tax on commissions received from that source. (See Ruling of State Tax Commission, June 9, 1959, 20 NYCRR 281.3). Petitioner is subject to tax for 1955, on his commissions from other insurance companies less allocable expenses as found in paragraph 2.

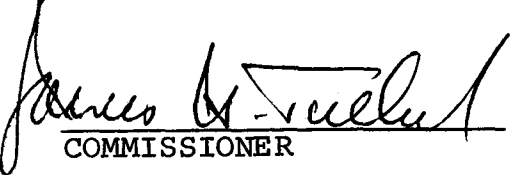
DETERMINATION

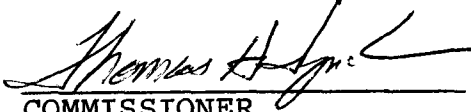
The assessments include taxes which could not have been lawfully demanded. The assessments for 1952, 1953, 1954 and 1956 are cancelled. The assessments for 1955 is revised and resettled to be \$212.83.

These sums may bear interest and other charges as provided
under sections 376 and 377 of the Tax Law.

DATED: Albany, New York
September 14, 1976

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

U.B.T.



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

September 14, 1976

TELEPHONE: (518) 457-3850

Mr. Sidney L. Wolkenberg
500 Fifth Avenue
New York, New York 10036

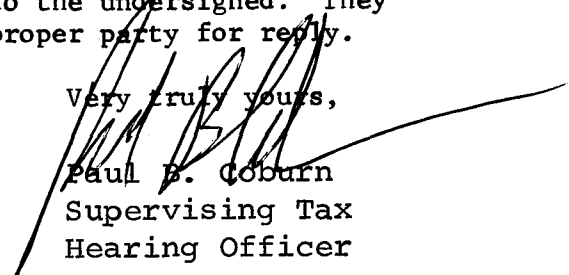
Dear Mr. Wolkenberg:

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

Please take further notice that pursuant to
Section ~~(a)~~ 386(j) 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.

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.

~~xxxxxx Taxpayer's Representative xxxxxxxx~~

Taxing Bureau's Representative:

TA-26 (4-7-76) **FORMAL HEARING**
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

No. 4006-66

Mr. Sidney L. Wolkenberg
500 Fifth Avenue
New York, New York 10036



413

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SIDNEY L. WOLKENBERG	:	DETERMINATION
for Revision or for Refund of Unincorporated	:	
Business Taxes under Article 16A of the Tax	:	
Law for the Years 1952 through 1956.	:	

Sidney L. Wolkenberg filed applications under section 374 of the Tax Law for revision of additional unincorporated business taxes assessed under Article 16A of the Tax Law for the years 1952 through 1956 and thereafter paid in full. Such applications were denied and applicant demanded a hearing. A hearing was duly held on January 28, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant appeared in person and without a representative and the Income Tax Bureau appeared by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the applicant, an insurance solicitor, is subject to unincorporated business tax under Article 16A of the Tax Law or whether he is an employee and so not subject to tax.

FINDINGS OF FACT

1. Petitioner is a soliciting agent of Union Central Life Insurance Company. The Company has headquarters in Cincinnati, Ohio. It has a general agency, The Charles B. Knight Agency, Inc., located at 225 Broadway, New York City. Knight has from 20 to 40 agents working from its office. From 1952 through 1956, petitioner regularly wrote \$1,000,000.00 of insurance a year.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application

of

DETERMINATION

SIDNEY I. WOLKENBERG

for Revision or for Refund of Unincorporated
Business Taxes under Article 16A of the Tax
Law for the Years 1952 through 1956.

Sidney I. Wolkenberg filed applications under section 375

of the Tax Law for revision of additional unincorporated business

taxes assessed under Article 16A of the Tax Law for the years

1952 through 1956 and thereafter paid in full. Such applications

were denied and applicant demanded a hearing. A hearing was duly

held on January 26, 1957, at the offices of the State Tax Commission

30 Centre Street, New York City, before Nigel G. Whitte, Hearing

Officer. The applicant appeared in person and without a representative

five and the Income Tax Bureau appeared by Edward H. Boas, Esq.,

(Francis X. Boylan, Esq., of Counsel). The record of said hearing

has been duly examined and considered.

ISSUE

The issue in this case is whether the applicant, an insurance

salesman, is subject to unincorporated business tax under Article 16A

of the Tax Law or whether he is an employee and so not subject to tax.

FINDINGS OF FACT

1. Petitioner is a soliciting agent of Union Central Life

Insurance Company. The company has headquarters in Cincinnati,

Ohio. It has a general agency, the Charles E. Knight Agency, Inc.,

located at 325 Broadway, New York City. Knight has from 20 to 40

agents working from its office. From 1952 through 1956, petitioner

regularly wrote \$1,000,000.00 of insurance a year.

2. Petitioner's commissions were primarily from Union Central, a secondary source of commissions was Guardian Life Insurance Co., which wrote pension plans, a line of business in which Union Central did not engage. Petitioner typically received first year commissions from 6 to 10 other companies each year and renewal commissions from 10 to 15 additional companies. In 1955 his commissions from sources other than Union Central amounted to \$17,477.30. He estimates that 25% of his total expenses is allocable to this business and that amount, after considering disallowed deductions, is found to be \$4,576.31.

3. Petitioner had a written contract that had a term of 10 years from January 1, 1959. It stated the following: "Within the territory hereinbefore described the Agent shall be free to exercise his own judgment as to the persons from whom he will solicit insurance and the time and place of solicitation, but the Company and/or the Manager may from time to time prescribe regulations by means of the Agents Manual or otherwise, respecting the conduct of the business covered hereby, not interfering with such freedom of action, which regulations shall be observed and conformed to by the Agent. Nothing herein shall be construed to create the relation of employer and employee between the Company and the Agent or between the Manager and the Agent." The contract also provided the following: "The Company will furnish stationary and its own publications free of charge. The agent shall keep records of business done and such records shall be the property of the Company and shall be open to inspection by the Company. The agreement may be terminated on notice by either party. The Agent's compensation is based on up to 50% of the first year premiums collected plus renewal commissions for 9 years if at least \$50,000.00 of business was done in the year. The right to renewal commissions survived the death of the agent or the termination of the agreement."

2. Petitioner's commissions were primarily from Union Central, a security service of commissions was guaranteed life insurance Co., which wrote general lines, a line of business in which Union Central did not engage. Petitioner typically received three year commissions from 5 to 10 other companies and year and renewal commissions from 10 to 15 additional companies. In 1952 his commissions from various other than Union Central amounted to \$11,417.50. He estimated that 25% of his total expenses is allocable to this business and that amount, after deducting the allowed deduction, is found to be \$4,545.31.

3. Petitioner had a written contract that ran in term of 10 years from January 1, 1952. It stated the following: "Within the territory hereinafter described the Agent shall be free to exercise his own judgment as to the persons from whom he will solicit business and the time and place of solicitation, but the Company and/or the Manager may from time to time exercise regulations in force of the Agents Manual or otherwise, respecting the conduct of the business covered hereby, not interfering with such freedom of action, which regulation shall be observed and conformed to by the Agent. Nothing herein shall be construed to create the relation of employer and employee between the Company and the Agent or between the Manager and the Agent." The contract also provided the following: "The Company will furnish stationery and its own official car free of charge. The Agent shall keep records of business done and such records shall be the property of the Company and shall be open to inspection by the Company. The agreement may be terminated on notice by either party. The Agent's compensation is based on up to 50% of the first year premiums collected plus renewal commissions for 3 years if at least \$20,000.00 of business was done in the year. The right to renewal commissions survives the death of the agent or the termination of the agreement."

4. Petitioner also entered into a "persistency agreement" with the company. That agreement stated that: "The Agent will act exclusively for the Company and/or the Manager so far as to submit first to the Company all applications of insurance obtained by him which are acceptable under its rules. On policies written in years when the Agent writes \$50,000.00 or more in new insurance the renewal commissions are in the amount of 3% to 5% on the second to fifth year premiums. The right to these premiums survives the death of the Agent or the termination of the contract. If the Agent qualifies by the amount of business in force or by length of service with the Company, and if he has continued to place with the Company all applications for life insurance acceptable under its rules, then an additional persistency allowance is payable to him of 2% to 5% on premiums after the fifth year. If the Agent dies while under contract, the persistency allowances continue for two years."

5. Social security was withheld from petitioner's compensation. Income tax and disability insurance were not withheld.

6. Petitioner was required to attend sales meetings at the Knight Agency.

7. Petitioner leased a part of a room in 225 Broadway from the Knight Agency at a stipulated rental. He employed a secretary. Petitioner had an agreement with the Knight Agency for an expense allowance measured by 10% of the first \$25,000.00 of premiums and 15% of any excess premiums. In most years this compensated him for all, or almost all, of his office expenses.

8. Petitioner was a member of the partnership of Wolkenberg & Warshaw, which operated from 225 Broadway. This was a general insurance business. Mr. Warshaw devoted all his time to that business selling property and casualty insurance exclusively and drew a salary as well as 50% of the profits. Petitioner did not devote much time to this business and drew no salary. Generally,

4. Petitioner also entered into a "partnership agreement"

with the company. This agreement stated that "The firm will

not exclusively for the company and the partners as far as to

under time to the company all applications of business obtained

by this firm are accepted under the rules. On policies written

in years when the firm writes \$50,000 or more in new business

the firm's contribution was in the amount of \$5 to \$25 on the second

to fifth year premium. The right to these premiums belongs to the

death in the event of the termination of the contract. In the

event qualified by the amount of business in force on the date

of service with the company, and if he has continued to place with

the company all applications for life insurance acceptable under

the rules, then on termination of service he shall be entitled to

one of \$5,000 or \$10,000 or \$20,000, the fifth year. In the event

also which under contract the partnership agreement contained for

two years."

5. Petitioner was entitled to "partnership" compensation

income tax and disability insurance for \$100,000.

6. Petitioner was required to attend sales meetings of the

Knights Agency.

7. Petitioner leased a part of a room in 318 Broadway from

the Knight Agency at a negotiated rental. He employed a secretary.

Petitioner had an agreement with the Knight Agency for an expense

allowance measured by 10% of the first \$25,000.00 of premiums and

10% of any excess premium. In most years this amounted to \$100 for

all or almost all of the office expenses.

8. Petitioner was a member of the partnership of Wolfshagen

and Marshaw, which operated from 318 Broadway. This was a general

insurance business. Mr. Marshaw devoted all his time to that

business and did not operate and was not an active partner and

did not share a salary as well as 50% of the profits. Petitioner did not

share any time to this business and did not share a salary. Generally,

Mr. Warshaw referred life insurance business to petitioner and petitioner referred general insurance business to Mr. Warshaw. The partnership employed its own secretaries and other office help. Petitioner asserts that the company encouraged a general insurance business because it acts as a feeder for the life insurance business and protects life insurance clients from outside competition. Petitioner carried two business cards, one for the partnership and one for his own life insurance business. In most years petitioner received \$6,000.00 to \$9,000.00 from the partnership. These sums are not included in the assessments.

9. The assessments are in the following amounts:

1952 - \$136.74	1955 - \$ 382.37
1953 - \$ 90.15	1956 - \$1,057.49
1954 - \$337.58	

No interest is included in these amounts. The assessments for 1954, 1955 and 1956, include amounts increased by the disallowance of certain business deductions on a federal audit which are not contested.

CONCLUSIONS OF LAW

Petitioner is an employee of Union Central Life Insurance Company and is not subject to tax on commissions received from that source. (See Ruling of State Tax Commission, June 9, 1959, 20 NYCRR 281.3). Petitioner is subject to tax for 1955, on his commissions from other insurance companies less allocable expenses as found in paragraph 2.

DETERMINATION

The assessments include taxes which could not have been lawfully demanded. The assessments for 1952, 1953, 1954 and 1956 are cancelled. The assessments for 1955 is revised and resettled to be \$212.83.

Mr. Wanshan referred this insurance business to petitioner and petitioner referred several insurance business to Mr. Wanshan. The partnership employed its own secretaries and other office help. Petitioner asserted that the company conducted a general insurance business and acted as a broker for the life insurance business and provided life insurance policies from outside competition. Petitioner carried two business years one for the partnership and one for his own life insurance business. In most years petitioner received \$5,000.00 to \$5,500.00 from the partnership. These sums are not included in the assessments.

3. The assessments are in the following amounts:

1953 - \$382.37	1954 - \$382.37
1955 - \$382.37	1956 - \$382.37
1957 - \$382.37	1958 - \$382.37
1959 - \$382.37	1960 - \$382.37

No interest is included in these amounts. The assessments for 1953, 1954 and 1955 include amounts assessed by the disallowance of certain business deductions on a federal audit which are not contained.

CONTINUATION OF LAW

Petitioner is an employee of Union Central Life Insurance Company and is not subject to tax on commissions received from that source. (See Ruling of State Tax Commission, June 9, 1955, 30 NYCRR 281.3). Petitioner is subject to tax for 1955, on his commissions from other insurance companies less allowable expenses as found in paragraph 2.

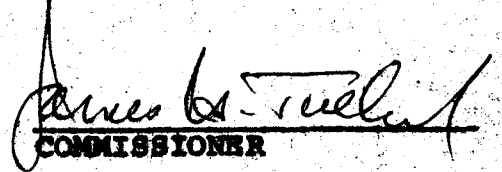
CONTINUATION

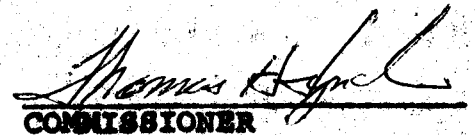
The assessments include taxes which could not have been lawfully demanded. The assessments for 1953, 1954 and 1955 are cancelled. The assessments for 1956 are revised and assessed to be \$382.37.

These sums may bear interest and other charges as provided
under sections 376 and 377 of the Tax Law.

DATED: Albany, New York
September 14, 1976

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

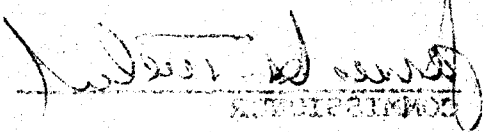
These rules may have changed and other changes are provided


under sections 310 and 311 of the Tax Law.

STATE TAX COMMISSION

DATED: Albany, New York

September 14, 1937


COMMISSIONER


COMMISSIONER


COMMISSIONER