

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OSCAR C. and LOIS ABRAMSON

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~~ ~~xxxxxx~~ :
1968 and 1969.

State of New York
County of Albany

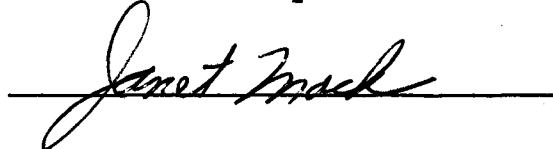
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Oscar C. & Lois
Abramson (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Oscar C. Abramson
166-25 Powells Cove Boulevard
Whitestone, New York 11357

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~~
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

15th day of September, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OSCAR C. and LOIS ABRAMSON

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) ~~or Period(s)~~ :
1968 and 1969.

State of New York
County of Albany

John Huhn, 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 15th day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Norman R. Berkowitz

(representative of) the petitioner in the within proceeding,

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

as follows:

Norman R. Berkowitz, Esq.
Berkowitz & Ross
666 Fifth Avenue
New York, New York 10019

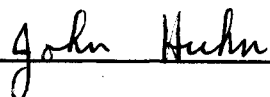
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

15th day of September, 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 15, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. & Mrs. Oscar C. Abramson
166-25 Fovells Cove Boulevard
Whitestone, New York 11357**

Dear Mr. & Mrs. Abramson:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(b) 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
OSCAR C. and LOIS ABRAMSON : DECISION
for Redetermination of Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1968 and 1969.

Petitioners, Oscar C. and Lois Abramson, residing at 166-25 Powells Cove Boulevard, Whitestone, New York 11357, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968 and 1969. (File No. 00550). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 28, 1977 at 1:15 P.M. Petitioner, Oscar C. Abramson, appeared pro se and for his wife and by Norman Berkowitz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Francis Cosgrove, Esq. of counsel).

ISSUES

I. Did petitioner Oscar C. Abramson's sales activities as an insurance agent during the years 1968 and 1969 constitute the carrying on of an unincorporated business?

II. Were penalties properly imposed under section 685(a) of the Tax Law for the year 1968 and section 685(a)(1) and (a)(2) for the year 1969 for failure to file and pay unincorporated business tax returns?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Oscar C. Abramson, listed his occupation as insurance broker on the joint 1968 and 1969 New York State resident income tax returns filed by him and his wife, petitioner, Lois Abramson.

2. Petitioner, Oscar C. Abramson, did not file 1968 and 1969 New York State unincorporated business tax returns, as his accountant advised him he was not required to file such returns.

3. On April 19, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Oscar C. and Lois Abramson, asserting that unincorporated business tax was due for the years 1968 and 1969 in connection with the income from Oscar C. Abramson's activities as an insurance broker. The statement also imposed penalties for failure to file unincorporated business tax returns for said years and for failure to pay the tax when due. In accordance with the aforesaid statement, a Notice of Deficiency in the sum of \$1,028.93 was issued on February 28, 1972.

4. Petitioner, Lois Abramson, was not conducting an unincorporated business during the years in question.

5. During the years 1968 and 1969, petitioner, Oscar C. Abramson, represented Equitable Life Insurance Company of Iowa ("Equitable") and its general agent in the capacity of life insurance soliciting agent.

6. Petitioner contended that his principal activity was the solicitation of insurance for Equitable. Said company provided petitioner with office space and stenographic help. He was subject to the general supervision of Equitable's general agent and was subject to the company's established production standards.

7. Petitioner, Oscar C. Abramson, was permitted to place insurance with other companies, if he first offered such insurance business to Equitable and Equitable rejected same.

8. Petitioner sold accident liability insurance and automobile, fire insurance, group medical and health insurance for other insurance companies which did not exercise any degree of control over his activities.

9. Petitioner's total commission income from all principals was approximately \$16,235.00 for the year 1968. This amount included \$6,925.45 reported on a withholding tax statement issued to petitioner for said year by Equitable.

10. Petitioner's total commission income from all principals was approximately \$21,480.00 for the year 1969. This amount included \$6,554.15 reported on a withholding tax statement issued to petitioner for said year by Equitable.

11. Petitioner deducted expenses incurred in activities on his tax returns which were not reimbursed by Equitable.

12. That petitioner, Oscar C. Abramson's life insurance sales activities for Equitable during the years 1968 and 1969 were performed in the furtherance of his other business insurance sales

activities and thereby constituted activities as an independent contractor rather than services as an employee within the meaning and intent of section 703(b) of the Tax Law.

13. That petitioner, Oscar C. Abramson's insurance sales activities during the years 1968 and 1969 constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law and all of said petitioner's commission income for such years was subject to the unincorporated business tax.

14. That petitioner, Oscar C. Abramson, had reasonable cause for failure to file unincorporated business tax returns for the years 1968 and 1969 and, therefore, the penalties imposed for said years are cancelled.

15. That the petition of Oscar C. and Lois Abramson is granted to the extent of cancelling the Notice of Deficiency against Lois Abramson and of cancelling the penalties and except as so granted, the Notice of Deficiency against Oscar C. Abramson is sustained together with such additional interest as may be legally owing.

DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER