

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVIN BARTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(e)~~ 23 of the :
Tax Law for the Year(s) ~~XXXXXXX~~ :
1967 & 1969

State of New York
County of Albany

Marsina Donnini, 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 15th day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Irvin Barton
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Irvin Barton
32 East Lyon Farm Drive
Greenwich, Connecticut 06830
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)~~
~~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 July, 1977.

Marsina Donnini

Janet Misch

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
IRVIN BARTON

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~~ of the :
1967 & 1969

State of New York
County of Albany

Marsina Donnini, 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 15th day of July, 1977, she served the within Notice of Decision by (certified) mail upon Jacob D. Shine, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jacob D. Shine, CPA
11 Sunrise Plaza
Valley Stream, New York 11581
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 July, 1977.

Marsina Donnini

Janet Mack



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

July 15, 1977

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

**Irvin Barton
32 East Lyon Farm Drive
Greenwich, Connecticut 06830**

Dear Mr. Barton:

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(s) **690** 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 CHIRYNATY
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
IRVIN BARTON	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1967 and 1969.	:	

Petitioner, Irvin Barton, 32 East Lyon Farm Drive, Greenwich, Connecticut 06830, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1967 and 1969 (File No. 12518). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 26, 1977 at 1:15 p.m. Petitioner appeared by Jacob D. Shine, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Whether the income derived from petitioner's activities as a soliciting insurance broker during the years 1967 and 1969 was subject to the unincorporated business tax imposed under Article 23 of the Tax Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On May 22, 1972, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Irvin Barton, asserting that the income received from his activities as an insurance broker was subject to the unincorporated business tax.

2. During the years in issue, the petitioner was an insurance broker primarily engaged in the sale of commercial casualty insurance for Wilson and Allen, Inc. He also received compensation from Vincent J. Ashton, a life insurance agent, for referrals he made to Mr. Ashton. He was compensated by his principals on a commission basis.

3. During the year 1967, the petitioner had gross receipts of \$23,220.52 and a net income allocable to New York of \$12,739.40. There were no records presented indicating the principals from whom this income was received. During the year 1969, the petitioner had gross receipts of \$36,291.00, which included commissions from Wilson and Allen, Inc. in the sum of \$25,499.52.

4. Wilson and Allen, Inc. provided the petitioner with office space, secretarial assistance and telephone service. Petitioner also made a business deduction for an office in the sum of \$1,088.00, on Schedule C, Form 1040 for the year 1969.

5. The principals whom the petitioner represented did not withhold State or Federal income taxes, social security benefits or pension plan payments from the commissions they paid him.

6. Petitioner was not reimbursed for the expenses he incurred while selling insurance. He filed Schedule C, Form 1040, Profit or Loss from Business or Profession, for 1967 and 1969. On these schedules, he claimed expenses for an office, automobile and entertainment.

7. Petitioner used his own discretion as to the division of time and selling techniques used to consummate the sale and referrals of insurance for his principals.

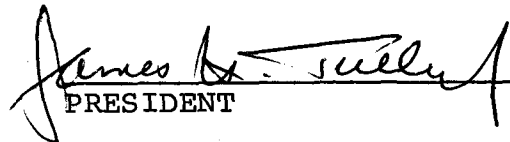
8. The petitioner stated in correspondence addressed to the Department of Taxation and Finance dated September 13, 1971 that, "... I have no employer and am an independent contractor."

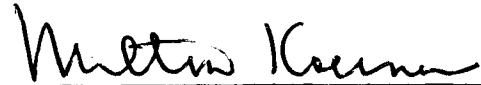
9. That the principals of the petitioner, Irvin Barton, did not exert that degree of control and supervision over his sales activities to permit the designation of petitioner as an employee within the meaning and intent of section 703(b) of the Tax Law. Therefore, the petitioner's activities as a soliciting insurance broker constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the allocated income shown on the Statement of Audit Changes issued January 4, 1971 is subject to unincorporated business tax.

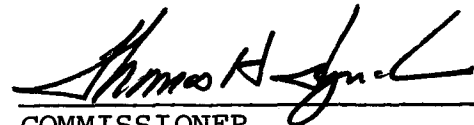
10. That the petition of Irvin Barton is denied and the Notice of Deficiency issued May 22, 1972 is sustained.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER