

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEIL J. BROWN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (a) 23 of the :  
Tax Law for the Year ~~(a) or Period (a)~~ 1970.:  
:

State of New York  
County of Albany

Bruce Batchelor , 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 4th day of March , 19 77, she served the within  
Notice of Decision by (certified) mail upon Neil J. Brown  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Neil J. Brown  
173 Rock Creek Lane  
Scarsdale, New York  
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)~~  
~~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

4th day of March , 19 77

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEIL J. BROWN

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 (x) 1970.:  
~~(x) 1970 (x)~~

State of New York  
County of Albany

Bruce Batchelor , 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 4th day of March , 19 77, she served the within  
Notice of Decision by (certified) mail upon Alan Warner  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Alan Warner  
97-77 Queens Boulevard  
Rego Park, New York 11374  
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

4th day of March , 1977.

Bruce Batchelor

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

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. Neil J. Brown  
173 Rock Creek Lane  
Scarsdale, New York

Dear Mr. Brown:

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

Please take further notice that pursuant to  
Section(~~x~~) **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,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative.

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
NEIL J. BROWN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the year 1970.	:	

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Petitioner, Neil J. Brown, residing at 173 Rock Creek Lane, Scarsdale, New York, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1970. (File No. 0-58833972).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on July 14, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Alan Warner. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

#### ISSUE

Whether the petitioner's income from his activities as a general agent is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Neil J. Brown, filed a resident 1970 New York State combined income tax return with his wife. He did not file an unincorporated business tax return for 1970. Upon audit, the Income Tax Bureau issued a Statement of Audit Changes which held that the income from his activities during the year 1970 as a general agent was subject to the unincorporated business tax. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency showing a deficiency of \$580.69 plus penalty and interest.

2. Petitioner was retained by Madison Life Insurance Company, as an "Account Executive" on a salary basis for the purpose of recruiting, training and supervising designated general agents and prospective general agents. In addition, he simultaneously served as a general agent under a career contract on a commission basis.

3. In order to carry out his responsibilities in his dual capacity, Madison Life Insurance Company provided the petitioner with office space, telephone and secretarial services without charge.

4. The petitioner was forbidden by contract from placing insurance with any other company without the consent of the Madison Life Insurance Company and such consent was only given for lines of insurance which were not written by them.

5. Although payroll taxes were withheld from his salary income, no payroll taxes were withheld from his commission income.

6. The petitioner was required to attend sales meetings and periodic conventions. He was subject to the company's established production standards and to its general supervision.

7. In addition to the salary and commission income received from Madison Life Insurance Company, the petitioner received renewal commissions of \$1,370.16 from Penn Mutual Life Insurance for insurance policies sold prior to 1970.

#### CONCLUSIONS OF LAW

A. That sufficient direction and control were exercised over petitioner's activities by Madison Life Insurance Company to result in an employee-employer relationship.

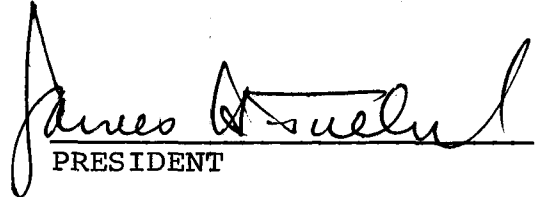
B. That the petitioner's income from his activities during 1970, as a career general agent and as an account executive, is not subject to unincorporated business tax within the meaning and intent of section 703 of Article 23 of the Tax Law.

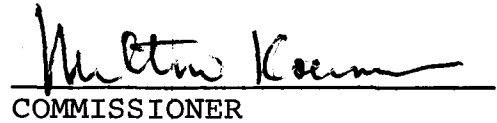
C. That although the income from Penn Mutual Life Insurance Company is subject to unincorporated business tax, the amount received in 1970 was insufficient to result in a tax liability.

D. That the petition of Neil J. Brown is granted and the Notice of Deficiency issued on May 19, 1975, is cancelled.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER