

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIUS and SADIE EPSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(17)~~ 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966, 1967 and 1968.

State of New York
County of Albany

Bruce Batchelor, 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 14th day of January, 1977, he served the within
Notice of Decision by (certified) mail upon Julius & Sadie Epstein

(~~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. Julius Epstein
530 East 23rd Street
New York, New York 10011

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

14th day of January, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

January 14, 1977

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

Mr. & Mrs. Julius Epstein
530 East 23rd Street
New York, New York 10011

Dear Mr. & Mrs. Epstein:

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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JULIUS AND SADIE EPSTEIN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law for	:	
the Years 1966, 1967 and 1968.	:	

Petitioners, Julius and Sadie Epstein, residing at 2925 Grand Concourse, Bronx, New York 10468, have filed a petition for re-determination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1966, 1967 and 1968 (File No. 8-12025313).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on June 9, 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 Joel I. Friedman and for his wife, petitioner, Sadie Epstein. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether the commissions received by the petitioner, Julius Epstein, from the Prudential Insurance Company constitutes income subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Julius and Sadie Epstein, timely filed New York State personal and New York State unincorporated business tax returns for the years 1966, 1967 and 1968.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Julius and Sadie Epstein, imposing unincorporated business tax upon the income received by the petitioner, Julius Epstein, from Prudential Life Insurance Company in accordance with his activities as a life insurance salesman. Based on the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency under the same date in the amount of \$868.28, plus interest of \$98.99 for a total of \$967.27.

3. The petitioner, Julius Epstein, asserts that the deficiency issued April 13, 1970, does not properly reflect the business expenses attributable to the business income received from Prudential Life Insurance Company of America.

4. For the period January 1, 1966 to August 31, 1966, the petitioner, Julius Epstein, worked under a "Full Time Special Agents Career Contract." Upon attaining the age of 65 in August, 1966, the petitioner, Julius Epstein, worked under an "Agent Emeritus Contract" for the period September 1, 1966 to December 31, 1966, and during the years 1967 and 1968 for the Prudential Life Insurance Company of America selling life, health and accident insurance from

which he received commissions amounting to \$7,417.93, \$7,820.46 and \$7,968.30, respectively for the years 1966, 1967 and 1968. The petitioner, Julius Epstein, also sold life, health and accident insurance with several other insurance companies for which he received commissions amounting to \$13,905.88, \$15,333.11 and \$14,016.63, respectively for the years 1966, 1967 and 1968.

5. The petitioner, Julius Epstein, was given office space, telephone and stenographic help, and was covered under health, welfare and pension plans for the Prudential Life Insurance Company. The company did withhold social security taxes. They did not withhold income tax.

6. Petitioner, Julius Epstein, pursuant to the "Full Time Special Agents Career Contract" with the Prudential Life Insurance Company, was restricted from soliciting for or placing any business of any kind written by the Company (other than surplus business) with any other insurance company. The petitioner has stated that this restriction was not strictly enforced in his situation. Under the "Agent Emeritus Contract" with Prudential Life Insurance Company the petitioner, Julius Epstein, was not restricted from soliciting for or placing business with any other insurance company.

7. The petitioner, Julius Epstein, would determine when, where, how and with whom he would solicit such business.

CONCLUSIONS OF LAW

A. That the income received by the petitioner, Julius Epstein, during the years 1966, 1967 and 1968 from the Prudential Life

Insurance Company of America and the other life insurance companies with whom he placed insurance constituted receipts from his regular business as a life insurance broker 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 aforesaid activities of petitioner, Julius Epstein, during the years 1966, 1967 and 1968 constituted the carrying on of an unincorporated business and his income derived therefrom is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the expenses and contributions relating to the Prudential Life Insurance Company of America income be allowed in the amounts of \$821.48 and \$56.63 for 1966, \$843.05 and \$68.44 for 1967 and \$861.14 and \$36.12 for 1968; that the petition of Julius and Sadie Epstein is granted to the extent; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued April 13, 1970; and, that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER