

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM AND ODETTE FOLDES

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~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
Xhe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 8th day of April , 1977, Xhe served the within  
Notice of Decision by (certified) mail upon William and Odette  
Foldes (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. and Mrs. William Foldes  
11 Riverside Drive  
New York, New York 10023  
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~~  
~~XXXXXX~~) 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

8<sup>th</sup> day of April , 1977.

Bruce Batchelor

Jnet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM AND ODETTE FOLDES

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) ~~1968, 1969 and 1970~~ :  
1968, 1969 and 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 8th day of April , 1977, she served the within  
Notice of Decision by (certified) mail upon George Shimmerlik, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. George Shimmerlik, CPA  
29 W. 34th Street  
New York, NY 10001  
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

8th day of April , 1977.

Bruce Batchelor

Janet Muck



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227  
**April 8, 1977**

ADDRESS YOUR REPLY TO

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

Mr. and Mrs. William Foldes  
11 Riverside Drive  
New York, New York 10023

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,

Enc.

**Frank J. Puccia**

**Supervisor of Small Claims Hearings**

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	:	
WILLIAM AND ODETTE FOLDES	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

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Petitioners, William and Odette Foldes, residing at 11 Riverside Drive, New York, New York 10023, have filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970 (File No. 0-58567567).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on July 15, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by George Shimmerlik, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Whether the petitioner's income from his activities as an insurance agent is subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, William Foldes, did not file unincorporated business tax returns for 1968, 1969 and 1970. Upon audit, the Income Tax Bureau issued a deficiency holding the income from his activities as an insurance agent subject to the unincorporated business tax.

2. Petitioner, William Foldes, is an insurance agent under a career contract for the Mutual of Omaha Insurance Co., selling through their general agent, C.H. Juergens Life Agency, Inc.

3. Petitioner, William Foldes, was paid strictly on a commission basis with no withholding of payroll taxes.

4. Petitioner was covered by a company pension and disability plan. He was provided with an office, along with secretarial, telephone and other services.

5. Petitioner, William Foldes' contract required that he devote his entire time to selling insurance for Mutual of Omaha Insurance Co.

6. Petitioner was required to meet the company's production standards, to attend periodic sales meetings, to attend four conventions annually, and to report daily to his immediate supervisor.

7. Mutual of Omaha Insurance Co. provided the petitioner with "leads", of which he was required to contact.

8. During 1968, 1969 and 1970, the petitioner, William Foldes,

did not sell or place insurance with any other firm, except with Mutual of Omaha Insurance Co., or its general agent or its subsidiaries.

CONCLUSIONS OF LAW

A. That the activities of petitioner, William Foldes, as a career life insurance agent for Mutual of Omaha Insurance Co. during the years 1968, 1969 and 1970 constituted services as an employee and not the carrying on of an unincorporated business.

B. That the income received by the petitioner from the aforesaid activities constituted compensation as an employee exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(b) of the Tax Law.

C. That the petition of William and Odette Foldes is granted and the Notice of Deficiency issued December 22, 1975, is cancelled.

DATED: Albany, New York  
April 8, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER