

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD A. HILLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (s) 23 of the :
Tax Law for the Year(s) ~~xxx Period(x)~~ :
1966 through 1969.

State of New York
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Bernard A. Hiller

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Bernard A. Hiller
2976 Clubhouse Road
Merrick, New York 11566

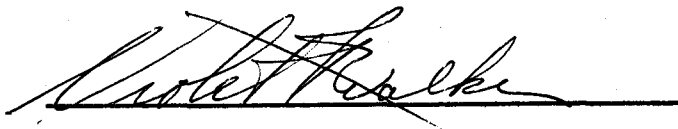
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 June, 1977.







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

June 14, 1977

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

Mr. Bernard A. Hiller
2976 Clubhouse Road
Merrick, New York 11566

Dear Mr. Hiller:

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

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

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~taxpayer's representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BERNARD A. HILLER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966 through 1969.	:	

Petitioner, Bernard A. Hiller, 2976 Clubhouse Road, Merrick, New York 11566, 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 1966 through 1969. (File No. 01856).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 13, 1976 at 1:30 P.M. Petitioner, Bernard A. Hiller, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUE

Whether the entire income of petitioner, Bernard A. Hiller, derived from the sale of insurance during the years 1966 through 1969, was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Bernard A. Hiller, filed New York State resident income tax returns for the years 1966, 1967, 1968 and 1969. He declared \$32,460.04, \$37,740.97, \$42,830.08 and \$40,485.16, respectively, as total income for each of the years in issue. He did not file unincorporated business tax returns for said years.

2. On June 28, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Bernard A. Hiller, imposing unincorporated business tax for the years in issue totalling \$5,397.01, plus a penalty of \$1,431.15 and \$785.52 in interest. Accordingly, a Notice of Deficiency in the sum of \$7,613.68 was issued with the aforesaid Statement of Audit Changes.

3. On October 1, 1971, petitioner, Bernard A. Hiller, paid \$1,738.22 of the amount imposed by the Notice of Deficiency issued June 28, 1971.

4. Petitioner, Bernard A. Hiller, was employed by Phoenix Mutual Life Insurance Company, per 1954 contract of these two parties making petitioner a "career agent," during the years in issue.

5. Petitioner, Bernard A. Hiller, was provided with an office, secretary and telephone by Phoenix Mutual. Phoenix Mutual maintained a right to first refusal of a prospective insurance sale by petitioner.

6. Petitioner, Bernard A. Hiller, offered 100% of his sales to Phoenix Mutual, during the years in issue, of which approximately 87% were accepted. The other 13% were then sold to other insurance companies.

7. The petitioner, Bernard A. Hiller, offered no documentary or other substantial evidence regarding the manner in which he apportioned his income during the years in issue, between Phoenix Mutual and those outside sales which constituted an unincorporated business.

8. Petitioner, Bernard A. Hiller, split sales commissions with other insurance salesmen, and no documentary or other substantial evidence was offered to apportion these commissions between Phoenix Mutual sales and sales for other insurance companies.

9. Petitioner, Bernard A. Hiller, maintained a home office at his own expense where he did business for Phoenix Mutual and other insurance companies. The petitioner also maintained and owned an automobile for his sales work, and was not reimbursed by Phoenix Mutual.

10. When petitioner, Bernard A. Hiller's individual sale was refused by Phoenix Mutual, any further work done to make the sale with another company was nominal.

11. Petitioner, Bernard A. Hiller, did not file unincorporated business tax returns during the years in issue, because he was advised by his accountant that it was not necessary.

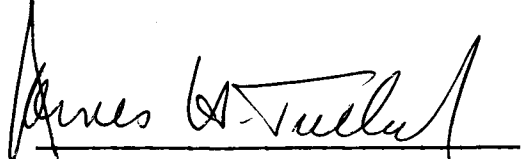
CONCLUSIONS OF LAW

A. That petitioner, Bernard A. Hiller, failed to submit any documentary or other substantial evidence to prove what percentage of his income from the sale of insurance during the years 1966 through 1969 was derived from Phoenix Mutual Life Insurance Company and what percentage was derived from other insurance companies. Therefore, even though he may have been a "career agent" and an "employee" of Phoenix Mutual Life Insurance Company, all of his income from the sale of life insurance must be held subject to the unincorporated business tax because of his failure to prove what percentage of said income may have been exempt from said tax under section 703(b) of the Tax Law.

B. That, since petitioner, Bernard A. Hiller, had reasonable cause for failing to file unincorporated business tax returns for the years 1966 through 1969, the penalty under section 685(a) of the Tax Law for the years 1966, 1967 and 1968 is waived, as is the penalty under section 685(a) (1) & (2) of the Tax Law for the year 1969; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued June 28, 1971; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
June 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER