

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY KAPLAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (2) 23 of the :
Tax Law for the Year(s) or ~~Period(s)~~ 1965, :
1966 & 1967.

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 26th day of April , 1977, she served the within
Notice of Decision by (certified) mail upon Murray Kaplan
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Murray Kaplan
18 Mistletoe Drive
Mattawan, New Jersey
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

26th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY KAPLAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (8) 23 of the :
Tax Law for the Year(s) or Period(s) 1965, :
1966 & 1967

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 26th day of April, 1977, she served the within Notice of Decision by (certified) mail upon Alfred Greenberg (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Alfred B. Greenberg, Esq.
c/o Phillips, Gold & Company
1140 Avenue of the Americas
New York, New York 10036
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

26th day of April, 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

April 26, 1977

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

Mr. Murray Kaplan
18 Mistletoe Drive
Mattawan, New Jersey

Dear Mr. Kaplan:

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

Please take further notice that pursuant to
Section ~~720~~ **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. Puccio
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MURRAY KAPLAN	:	DECISION
for Redetermination of Deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the Years 1965, 1966	:	
and 1967.	:	

Petitioner, Murray Kaplan, 18 Mistletoe Drive, Mattawan, New Jersey, 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 1965, 1966 and 1967. (File No. 7-73232062). A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1976, at 10:45 A.M. Petitioner appeared by Alfred Greenberg, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Was the income derived from petitioner, Murray Kaplan's activities as a soliciting insurance agent during the years 1965, 1966 and 1967, subject to the unincorporated business tax imposed under Article 23 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Murray Kaplan, and his wife Lorraine, filed joint New York State income tax nonresident returns for the years 1965, 1966 and 1967. He did not file unincorporated business tax returns for these years.

2. On August 30, 1971, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Murray Kaplan, imposing unincorporated business taxes in the sum of \$949.96 upon the income he received during the years 1965, 1966 and 1967.

3. During the years in issue, petitioner, Murray Kaplan, was a soliciting insurance agent. He maintained an agreement with Connecticut Mutual Life Insurance Company and worked for Halsey D. Josephson, General Agent. This agreement stipulated that he was to meet the company's production standards for classification as a full-time life insurance agent. This agreement also stipulated that the petitioner was free to exercise his own judgement as to the time, place and means of soliciting applications for insurance. The agreement had no provision stipulating that he was to first offer Connecticut Mutuals's life insurance to his client.

4. Petitioner, Murray Kaplan, was not required to report daily at the General Agent's office, but made it a practice to phone in each day. He was provided with office space, secretarial help and telephone facilities at the company's expense.

He was a participant in the company's pension plan and was covered by group life and medical insurance at the company's expense. His earnings from Connecticut Mutual were subject to deductions for FICA taxes; however, state and Federal income taxes were not withheld.

5. Petitioner, Murray Kaplan's income for the years at issue was derived from the following sources:

	<u>1965</u>	<u>1966</u>	<u>1967</u>
Connecticut Mutual Income	\$10,095.93	\$11,936.74	\$ 9,627.26
General Insurance Income	4,840.84	5,384.95	5,612.50
Excess Life, Health & Accident	<u>5,431.11</u>	<u>4,469.45</u>	<u>3,208.60</u>
Total	\$20,367.88	\$21,791.14	\$18,448.36

He was reimbursed on a commission basis for both the life insurance he sold and for referrals he made to General Insurance offices.

6. Petitioner, Murray Kaplan, was not reimbursed for expenses he incurred while selling insurance. He filed Schedule C, Profit or Loss from Business or Profession, for 1965, 1966 and 1967. On these schedules he claimed expenses for an office phone, office supplies, entertainment and a home office.

7. Petitioner, Murray Kaplan, used his own discretion as to his division of time and place and techniques used to consummate the sales of insurance.

CONCLUSIONS OF LAW

A. That Connecticut Mutual Life Insurance Company did not exert that degree of control and supervision over the activities of petitioner, Murray Kaplan, to permit the designation of petitioner as an employee within the meaning of section 703(b) of the Tax Law. Therefore, petitioner's activities as a soliciting insurance agent constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law.


B. That the petition of Murray Kaplan is denied and the Notice of Deficiency issued August 30, 1971, is sustained.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER