

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID SCHULTZ

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Unincorporated Business  
Taxes under Article (23) 23 of the  
Tax Law for the Year(s) ~~1967, 1968, 1969 and 1970.~~  
1967, 1968, 1969 and 1970.

State of New York  
County of Albany

Marsina Donnini, 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 24th day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon David Schultz  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. David Schultz  
15 Whitetail Road  
Irvington, New York 10533  
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

24th day of August, 1977.

Marsina Donnini

Janet Mark

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID SCHULTZ

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) ~~or Period(s)~~ :  
1967, 1968, 1969 and 1970.

State of New York  
County of Albany

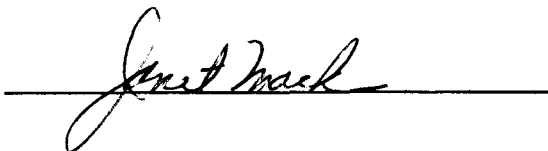
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Morton Leben (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Morton Leben, CPA  
450 Seventh Avenue  
New York, New York 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

24th day of August, 1977.

  
Marsina Donnini

  
Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

August 24, 1977

Mr. David Schultz  
15 Whitetail Road  
Irvington, New York 10533

Dear Mr. Schultz:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty  
Hearing Examiner

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	:	
DAVID SCHULTZ	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1967, 1968, 1969 and 1970.	:	

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Petitioner, David Schultz, residing at 15 Whitetail Road, Irvington, New York 10533, 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 years 1967, 1968, 1969 and 1970. (File No. 13401).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on November 17, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Morton Leben, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUES

I. Whether the income received by the petitioner, David Schultz, from his activities as an insurance consultant during the years 1967, 1968, 1969 and 1970 is subject to unincorporated business tax.

II. Whether the petitioner's income from his activities as an insurance consultant should be allocated as a business carried on within and without the State of New York, pursuant to section 707 of the Tax Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Income Tax Bureau issued a Notice of Deficiency in the sum of \$4,301.49, dated June 26, 1972, against the petitioner, David Schultz, on the grounds that the income from his activities as an insurance consultant is subject to the unincorporated business tax.

2. Petitioner, David Schultz, and his wife, timely filed New York State resident income tax returns for the years 1967, 1968, 1969 and 1970. He did not file unincorporated business tax return for said years.

3. During the years 1967, 1968, 1969 and 1970, the petitioner, David Schultz, was a "School Insurance" consultant representing Puritan Life Insurance Company of Rhode Island and Beneficial National Life Insurance Company of New York. His duties as a consultant involved the initiation and maintenance of sound and efficient administrative, sales and underwriting practices with respect to "School Insurance" programs.

4. The firms which petitioner, David Schultz, represented were unaffiliated. His compensation was based on a percentage of gross earned school insurance premiums and on net earnings on school insurance premiums written for each school year. The firms did not withhold Federal or New York State income taxes or social security tax from the consultant fees paid to petitioner, David Schultz, during the years 1967, 1968, 1969 and 1970. They apparently did not cover him under any employee related plans.

5. Petitioner, David Schultz, reported the consultant fees and deducted the business expenses on a Federal schedule "C". For the years 1967, 1968, 1969 and 1970, he deducted as a business expense, commissions paid to sub-administrative officers in the sum of \$5,500.00, \$20,600.00, \$38,250.00 and \$31,000.00, respectively.

6. Petitioner, David Schultz, had written employment contracts with the aforesaid firms. In the employment contract between the petitioner and Puritan Life Insurance Company of Rhode Island, paragraph IV headed "Relationship" states the following: "The consultant shall be free to exercise his judgment as to the time and manner of performing the services authorized by this agreement, subject to such rules and regulations as may be adopted from time to time by Puritan Life with respect

to the conduct of the business and not interfering with the freedom of action of the consultant. This agreement shall not be construed as creating an employer-employee relationship between Puritan Life and the consultant."

7. Petitioner, David Schultz, was supplied with a desk and file space, together with such secretarial and clerical services as he required, at the offices of Puritan Life Insurance Company located in Rhode Island, and at the offices of Beneficial National Life Insurance Company of New York, located in New York City. The petitioner performed services at these locations for or on behalf of the aforesaid firms, respectively. He maintained an office in his home located in Irvington, New York during the years 1967, 1968, 1969 and 1970.

8. Based upon an apparent agreement between the petitioner's authorized representative and the Income Tax Bureau, a withdrawal and a check in the sum of \$540.83 was submitted by the petitioner in full payment of the deficiency for the years 1967, 1968, 1969 and 1970. However, in a letter dated May 28, 1975, the Income Tax Bureau, based upon the facts of the case, did not accept the withdrawal submitted by the petitioner and applied the sum of \$540.83, as part payment of the deficiency for the years 1967, 1968, 1969 and 1970.

9. That the income received by the petitioner, David Schultz, from the firms he represented during the years 1967, 1968, 1969 and 1970 constituted income from his regular business as an insurance consultant and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

10. That the aforesaid activities of the petitioner during the years 1967, 1968, 1969 and 1970 constituted the carrying on of an unincorporated business and his income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

11. That although the petitioner performed services for, and was provided with office facilities by an out-of-state firm, his services were performed at these facilities on behalf of or for the firms merely because they were located outside New York State and, accordingly, such facilities do not constitute a regular place of doing business in accordance with the meaning and intent of section 707 of the Tax Law and 20 NYCRR 207.2(b). The income received from the out-of-state firm must be allocated to New York State, in accordance with section 707 of the Tax Law.



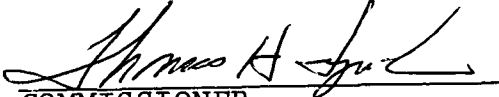
12. That the petition of David Schultz is denied. However, the Notice of Deficiency issued on June 26, 1972, in the sum of \$4,301.49, should be reduced by the part payment of \$540.83 submitted by the petitioner; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued on June 26, 1972; and that except as so stated, the petition is denied.

DATED: Albany, New York  
August 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER