

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
SPERO J. ZEPATOS and SOPHIA ZEPATOS :

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 and 1968

State of New York  
County of Albany

Bruce Bachelor , 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 April , 1977 , she served the within  
Notice of Decision by (certified) mail upon Spero J. Zepatos and  
Sophia Zepatos (~~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. Spero J. Zepatos  
56 Highland Circle  
Bronxville, New York 10708

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~~  
~~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 April , 1977.

Bruce Bachelor

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 14, 1977

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

Mr. and Mrs. Spero J. Zepatos  
56 Highland Circle  
Bronxville, New York 10708

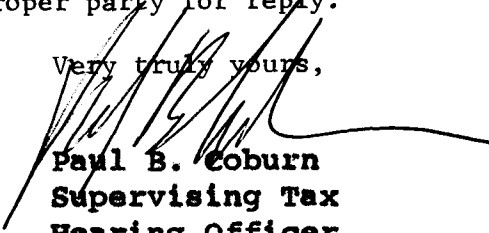
Dear Mr. & Mrs. Zepatos:

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

Please take further notice that pursuant to  
Section ~~(a)~~ **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: ~~Rebecca M. Depina~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SPERO J. ZEPATOS and SOPHIA ZEPATOS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967 and 1968.	:	

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Petitioners, Spero J. Zepatos and Sophia Zepatos, 56 Highland Circle, Bronxville, New York 10708, 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 1967 and 1968.

(File No. 00400)

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 July 13, 1976 at 2:45 p.m. and continued on October 28, 1976 at 11:10 a.m. The petitioner, Spero J. Zepatos, appeared pro se and for his wife, Sophia Zepatos. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. and Richard Kaufman, Esq. of counsel).

ISSUE

Whether the activities of the petitioner, Spero J. Zepatos, as an insurance salesman during the years 1967 and 1968 constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Spero J. Zepatos and Sophia Zepatos, filed New York State income tax resident returns for 1967 and 1968. They listed as business income \$21,892.34 and \$25,825.00 for the years 1967 and 1968, respectively.

2. On the advice of their accountant, the petitioners, Spero J. Zepatos and Sophia Zepatos, failed to file New York State unincorporated business tax returns for the years 1967 and 1968.

3. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Spero J. Zepatos and Sophia Zepatos, imposing unincorporated business tax of \$500.55 for the year 1967 and \$870.38 for the year 1968, plus a penalty of \$125.14 with interest of \$93.34, and a penalty of \$217.59 with interest of \$110.08, respectively. This was done on the grounds that the activities of the petitioner, Spero J.

Zepatos, as an insurance broker, were subject to the unincorporated business tax in these years. Accordingly, a Notice of Deficiency was issued totalling \$1,917.08.

4. In the years 1967 and 1968, the petitioner, Spero J. Zepatos, was associated with Berkshire Life Insurance Co., Inc. under a career-agent contract. The terms of the contract stated in part that "nothing herein shall be construed to create the relationship of employer and employee between the company and the agent." The petitioner was a licensed insurance broker during the period in issue. He sold insurance for companies other than Berkshire Life during this period. Berkshire Life handled life insurance only, and the petitioner had to place all of his casualty insurance clients with other companies. The petitioner shared commissions with Polar International Brokerage Corp. by referring clients to them during this period. Berkshire Life did not withhold Federal income tax from the petitioner, but did withhold social security during the period in issue. The petitioner was paid entirely on commissions by all of his principals, and he received no vacation pay.

5. Berkshire Life Insurance Co., Inc. supplied office space, stenographic assistance and telephone facilities to the

petitioner, Spero J. Zepatos, through its general agent, Corporate Programming, Inc., during the period in issue. The petitioner took business deductions for the office in his home on his Federal income tax return for each of the years in issue. The office in his home had a desk, telephone, typewriter and adding machine, all of which were used solely for his activities as an insurance broker. These home-office expenses, plus the petitioner's automobile, gasoline and tolls, together with any other travel expenses, were not reimbursed to the petitioner.

6. Berkshire Life Insurance Co., Inc. did not exercise substantial supervision and control over the sales activities of the petitioner, Spero J. Zepatos, during the period in issue. The contract of association mentioned in Finding of Fact "4", supra, stated in Clause IV that, "The agent shall be free to exercise his own judgement as to the persons from whom applications will be solicited and the time, place, and methods for performing all acts" in connection with his sales for Berkshire Life.

7. Petitioner, Spero J. Zepatos, was covered by a pension plan and the health insurance program of Berkshire Life.

8. Petitioner, Sophia Zepatos, was not engaged in an unincorporated business during the years 1967 and 1968.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Spero J. Zepatos, from the firms that he represented during the years 1967 and 1968 constituted income from his regular business of selling insurance 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.

B. That the aforesaid activities of petitioner, Spero J. Zepatos, during the years 1967 and 1968 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

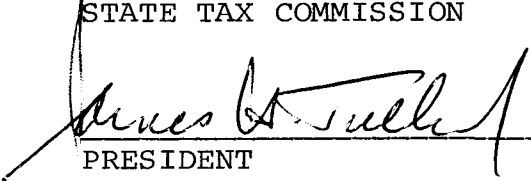
C. That since petitioner, Spero J. Zepatos, relied on the advice of his accountant, he had reasonable cause not to file unincorporated business tax returns for the years 1967 and 1968.

D. That the petition of Spero J. Zepatos and Sophia Zepatos is granted to the extent that the Notice of Deficiency as to Sophia Zepatos is cancelled, that the penalties for the years 1967 and 1968 are cancelled; that the Income Tax Bureau is hereby

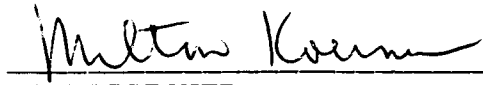
directed to accordingly modify the Notice of Deficiency issued May 24, 1971; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
April 14, 1977

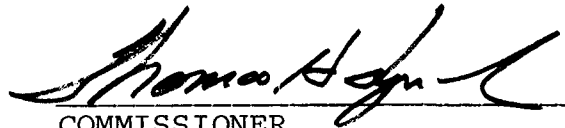
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER