

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. PARKER COLBORN

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) ~~or Period(s)~~ :
1969 through 1974.

State of New York
County of Albany


John Huhn , 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 20th day of September , 19 78 , she served the within
Notice of Decision by (certified) mail upon E. Parker Colborn

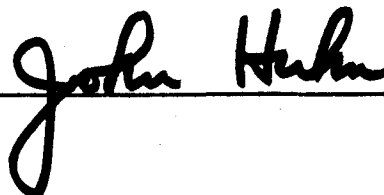
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: E. Parker Colborn
#3 Acacia Villa
Delray Dunes
Boynton Beach, Florida 33436
and by depositing same enclosed in a postpaid properly addressed wrapper 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)~~
~~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

20th day of September , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. PARKER COLBORN

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)~~ :
1969 through 1974.

State of New York
County of Albany

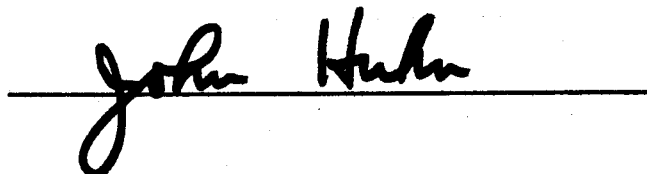
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon Joseph H. Murphy
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph H. Murphy
1400 Mony Plaza
Syracuse, New York 13202
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

20th day of September , 1978







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

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

September 20, 1978

Mr. E. Parker Colborn
#3 Anacia Villa
Delray Dunes
Boynton Beach, Florida 33436

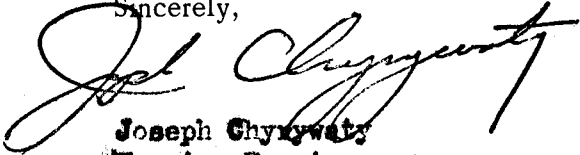
Dear Mr. Colborn:

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 Chynoweth
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
E. PARKER COLBORN : DECISION
for Redetermination of Deficiencies or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1969 through 1974. :

Petitioner, E. Parker Colborn, #3 Acacia Villa, Delray Dunes, Boynton Beach, Florida 33436, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1969 through 1974 (File Nos. 13124 and 15152).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 26, 1977 at 10:45 A.M. Petitioner appeared by Joseph H. Murphy, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether commissions received by petitioner which were derived from the sale of life insurance policies as a soliciting agent for Northwestern Mutual Life Insurance Company during the years 1969 through 1974, were subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, E. Parker Colborn, timely filed New York State unincorporated business tax returns for the years 1969 through 1974, in which he reported income derived from his operation of a general agency for Northwestern Mutual Life Insurance Company (hereinafter "Northwestern"). He did not report commission income derived from his activities as a soliciting life insurance agent for Northwestern.

2. The Income Tax Bureau contended that petitioner's selling activities were an integral part of his business activities and that the income derived therefrom was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on March 31, 1975 for the years 1969, 1970 and 1971 in the amount of \$5,097.59 in unincorporated business tax, plus \$1,203.90 in interest for a total due of \$6,301.49. It also issued a Notice of Deficiency on March 29, 1976 for the years 1972, 1973 and 1974 in the amount of \$4,033.92 in unincorporated business tax, plus applicable interest, regarding which an error in addition was made.

3. In 1954 petitioner took over operation of the general agency of Northwestern in Syracuse, New York, when the former general agent retired. He also continued to sell insurance in the capacity of soliciting agent for Northwestern.

4. As general agent for Northwestern, petitioner managed the office and recruited, trained and supervised approximately 30 soliciting or special agents. He received overriding commissions on sales made by the agents under his supervision. Petitioner conceded that these activities constituted the carrying on of an unincorporated business.

5. As a soliciting agent for Northwestern, petitioner sold insurance under the control and supervision of the regional director of agencies. He received a separate commission statement from Northwestern which reflected only that income derived from his activities as soliciting agent. He was furnished office space, as well as telephone and secretarial services by the general agency. He was permitted to sell insurance for other companies only after first offering contracts to Northwestern. He was required to meet company standards and to attend sales meetings. As a soliciting agent, petitioner participated in Northwestern's hospitalization and retirement plans. Neither income nor social security taxes were withheld from his compensation. Petitioner conceded that his commission income from principals other than Northwestern was subject to unincorporated business tax.

6. There was no clear division of petitioner's time between the general agency and his activities as a soliciting agent. The

commissions earned as a soliciting agent flowed through the general agency and as general agent, petitioner earned overrides on said commission income. Petitioner carried on his activities as general agent and soliciting agent at the same time and from the same location.

7. Petitioner timely filed an amended New York State unincorporated business tax return requesting a refund for the year 1974 which reflected a business interest expense that he failed to claim on his original return of \$3,400.92. A corresponding refund claim filed with the Internal Revenue Service was accepted and the Federal refund was received.

CONCLUSIONS OF LAW

A. That the activities of petitioner, E. Parker Colborn, as a soliciting agent during the years 1969 through 1974, were so integrated and interrelated with his general agency business as to constitute part of said business, and that all income derived from services performed by him as a soliciting agent of Northwestern Mutual Life Insurance Company was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law. Petition of John P. Propis, Decision of State Tax Commission, March 8, 1974. Petition of Harold Smith, Decision of State Tax Commission, April 12, 1971.

B. That the income from business for the year 1974 is reduced by \$3,400.92 to reflect the unclaimed business expense, and that the additional unincorporated business tax due is reduced from \$1,371.84 to \$1,192.12 for said year. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 29, 1976 and to determine the proper interest due from petitioner.

C. That the petition of E. Parker Colborn filed for the years 1969, 1970 and 1971 is denied; that the petition filed by him for 1972, 1973 and 1974 is granted to the extent indicated in Conclusion of Law "B" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER