

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD K. DAVIS

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) ~~xxx~~ Period(x) :
1964 through 1972 and 1974.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
xhe is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, xhe served the within
Notice of Decision by (certified) mail upon Robert S. Fink
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert S. Fink, Esq.
Kostelanetz, Ritholz & Mulderig
80 Pine Street
New York, New York 10005
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 April , 1978.

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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1964 through 1972 and 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 24th day of April , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Arnold K. Davis

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Arnold K. Davis
70 East 77th Street
New York, New York 10021

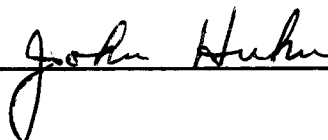
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 April , 1978.







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

April 24, 1978

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

**Mr. Arnold K. Davis
70 East 77th Street
New York, New York 10021**

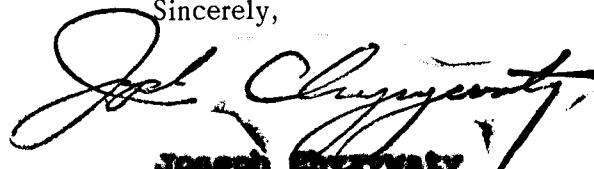
Dear Mr. Davis:

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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARNOLD K. DAVIS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1964 through 1972 and	:	
1974.	:	

Petitioner, Arnold K. Davis, residing at 70 East 77th Street, New York, New York 10021, 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 1964 through 1972 and 1974 (File No. 13740).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on September 23, 1976, at 10:45 a.m., at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Robert S. Fink, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUES

I. Whether petitioner, Arnold K. Davis' activities as an insurance salesman during the years 1964 through 1972 and 1974 constituted the carrying on of an unincorporated business.

II. Whether petitioner, Arnold K. Davis' activities as president of Arnold K. Davis & Co., Inc. were services performed in furtherance of or for the direct benefit of occupational activities, the conduct of which constituted an unincorporated business and therefore part of said unincorporated business.

FINDINGS OF FACT

1. Petitioner, Arnold K. Davis, filed New York State income tax returns for the years at issue. He did not file New York State unincorporated business tax returns for said years.

2. On December 22, 1975, the Income Tax Bureau issued three statements of audit changes against petitioner, Arnold K. Davis, for the years 1964 through 1972 and 1974, imposing unincorporated business tax against the petitioner upon the grounds that his activities as an insurance salesman during said years constituted the carrying on of an unincorporated business. In accordance with the aforesaid statements of audit changes, the Income Tax Bureau issued three notices of deficiency in the sum of \$20,744.72.

3. During the years 1964 through 1972 and 1974, petitioner, Arnold K. Davis, sold life insurance predominately for The Northwestern Mutual Life Insurance Company on a commissions basis. The Northwestern Mutual Life Insurance Company required petitioner to first place the risk with it and, if it did not accept the insurance, petitioner was free to place it with other life insurance companies, which he did. He could not sell other

forms of insurance without the consent of The Northwestern Mutual Life Insurance Company. In addition to commissions, he received persistency fees from said life insurance company for servicing policies which no longer generated commissions.

4. During the years 1964 through 1972 and 1974, The Northwestern Mutual Life Insurance Company did not withhold Federal or New York State income taxes on commissions and fees paid to petitioner, Arnold K. Davis; however, it did withhold social security taxes from said commissions and fees. He was not reimbursed for expenses incurred in connection with his sales activities and deducted such expenses on schedule "C" of his Federal income tax return.

5. Petitioner, Arnold K. Davis, contributed to a company pension and profit sharing plan and was a member of the Special Agents Association which negotiates contract changes on behalf of the special agents. He was provided with a desk and a telephone at the offices of the general agent of The Northwestern Mutual Life Insurance Company in New York City, which he reported to twice per week. His name is listed on the building directory of the company, and he is provided with company letterhead and stationery which also lists his name in addition to that of the company. He employed his own stenographic help, but he received a stenographic allowance from the company on the basis of his sales volume.

6. Petitioner, Arnold K. Davis, was subject to the established production standards and soliciting rules of The Northwestern Mutual Life Insurance Company. He was required to attend sales meetings and training session. In addition, he was required to contact policyholders when premium payments become past due.

7. During the years 1964 through 1972 and 1974, petitioner, Arnold K. Davis, was president, director and majority stockholder of Arnold K. Davis & Co., Inc., an insurance brokerage firm that handled all types of general insurance. He received a salary from said corporation, not dependent upon volume insurance placed with it, for supervision and management.

CONCLUSIONS OF LAW

A. That the Northwestern Mutual Life Insurance Company exercised sufficient direction and control over petitioner, Arnold K. Davis's activities to establish an employer-employee relationship within the meaning and intent of section 703(b) of the Tax Law. However, petitioner's activities for companies other than the Northwestern Mutual Life Insurance Company and Arnold K. Davis & Co., Inc. constituted services performed by the petitioner as an independent contractor.

B. That petitioner's activities as a life insurance salesman for the Northwestern Mutual Life Insurance Company during the years 1964 through 1972 and 1974 did not constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law and, therefore, the income therefrom was not subject to the unincorporated business tax.

C. That petitioner's insurance sales activities during the years 1964 through 1972 and 1974 for companies other than

the Northwestern Life Insurance Company and Arnold K. Davis & Co., Inc. constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law and, therefore, the income therefrom was subject to the unincorporated business tax.

D. That the services rendered by petitioner during the years 1964 through 1972 and 1974 to Arnold K. Davis & Co., Inc. were not so integrated and interrelated with his life insurance business so as to constitute a part of a general insurance business regularly carried on by him; and therefore, the salary received from Arnold K. Davis Co., Inc. was not subject to the unincorporated business tax.

E. That the Income Tax Bureau is instructed to modify the notices of deficiency issued December 22, 1975 to conform with the aforesaid conclusions and except as so modified, the notices of deficiency are sustained and the petition of Arnold K. Davis is denied.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER