

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ABRAHAM HARRIS

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(s)~~ :
1968, 1969 and 1970.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 1978, he served the within
Notice of Decision by (certified) mail upon Abraham Harris

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:

Mr. Abraham Harris
393 Seventh Avenue
Suite 920
New York, New York 10001

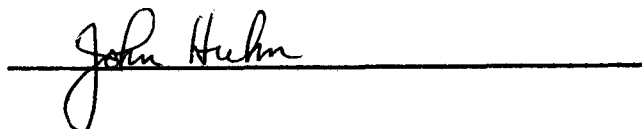
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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ABRAHAM HARRIS

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For a Redetermination of a Deficiency or :
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Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~1968, 1969 and 1970~~ :
1968, 1969 and 1970.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1978, he served the within
Notice of Decision by (certified) mail upon Samuel D. Levin

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Samuel D. Levin, Esq.
393 Seventh Avenue - Suite 920
New York, New York 10001

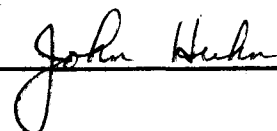
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August, 1978.







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

August 25, 1978

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

**Mr. Abraham Harris
393 Seventh Avenue
Suite 920
New York, New York 10001**

Dear Mr. Harris:

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 Chyrvaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Years 1968, 1969 and 1970.

DECISION

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 28, 1977 at 9:15 A.M. Petitioner appeared by Samuel D. Levin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

Whether petitioner's activities as an insurance salesman during 1968, 1969 and 1970 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Abraham Harris, timely filed New York State personal income tax returns for the years 1968, 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities as an insurance salesman constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. A Notice of Deficiency was issued February 24, 1976 for 1968, 1969 and 1970 in the amount of \$6,179.86 in unincorporated business tax, plus \$2,459.56 in penalty and \$2,179.69 in interest, for a total due of \$10,819.11.

3. Petitioner contended that since 1920, he had performed services as a full-time employee of Equitable Life Assurance Society of the United States (hereinafter "Equitable"), but never in the capacity of insurance broker or independent contractor.

4. Petitioner sold Equitable's life, accident and health, and group insurance policies on a commission basis during 1968, 1969 and 1970. He was furnished with office space, telephone service and a secretary at Equitable's general agent's place of business at no cost to himself. Because of his high volume of sales and knowledge of Equitable's sales methods, he was referred to as "Mr. Equitable" and gave lectures at sales meetings which

he was required to attend. Petitioner was supervised directly by the agency manager and was permitted to place insurance for other companies only after he had first offered said insurance to Equitable. Approximately 90% of petitioner's gross income was derived from insurance he sold for Equitable. No control of petitioner's activities was exercised by the other companies for whom he sold insurance.

5. Equitable did not withhold income taxes from petitioner's or any other sales personnel's compensation. It did withhold social security and petitioner was covered by a company employee pension plan. Petitioner was employed under a written contract which designated his status to be that of independent contractor.

6. Because the heat and/or air-conditioning was turned off at the general agent's place of business at 5:00 P.M., and because of the voluminous paper work involved, petitioner did insurance work at home. He maintained an office at home and occasionally hired temporary clerical help. His home telephone listing was in his own name only. Petitioner had substantial business expenses which he claimed as deductions on Federal Schedule "C".

7. Petitioner seldom took vacations. When he did so, they were scheduled immediately before or after an away-from-home sales meeting. He was not required to work stated hours, but was subject to production standards.

CONCLUSIONS OF LAW

A. That the designation of petitioner as an independent contractor by Equitable Life Assurance Society of the United States was not determinative of his status as such; therefore, petitioner, Abraham Harris, was an employee of said principal in accordance with the meaning and intent of section 703(b) of the Tax Law and his income derived therefrom was not subject to unincorporated business tax.

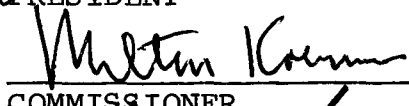
B. That petitioner's activities as an insurance salesman for companies other than Equitable constituted the carrying on of an unincorporated business for 1968, 1969 and 1970 in accordance with the meaning and intent of section 703 of the Tax Law. However, the income he derived from said activities was too small to result in unincorporated business tax for said years.

C. That the petition of Abraham Harris is granted and the Notice of Deficiency issued February 24, 1976 is cancelled.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER