

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD B. MENIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (8) 23 of the :  
Tax Law for the Year(s) ~~xxx Period(s)~~ 1964 :  
through 1970 and 1972 through 1974.

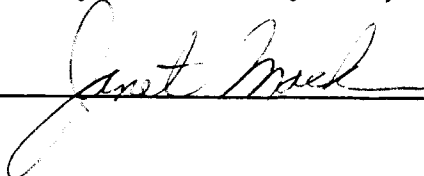
State of New York  
County of Albany

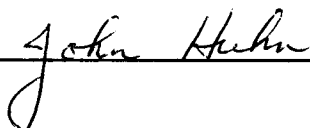
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of February , 1978, she served the within  
Notice of Decision by (certified) mail upon Richard B. Menin  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Richard B. Menin  
924 Fenimore Rd.  
Larchmont, NY 10538  
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  
~~xxxxxx~~ last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

6th day of February , 1978.

  
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\_\_\_\_\_

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STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :  
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Taxes under Article(s) 23 of the :  
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through 1970 and 1972 through 1974.

State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of February , 1978, she served the within  
Notice of Decision by (certified) mail upon Harvey Lifset, Esq.

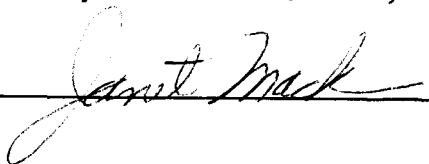
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Harvey Lifset, Esq.  
112 State Street  
Albany, NY 12207

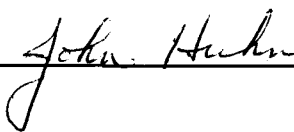
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Sworn to before me this

6th day of February , 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

February 6, 1978

Richard B. Menin  
924 Fenimore Rd.  
Larchmont, NY 10538

Dear Mr. Menin:

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 Chyrwany  
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
RICHARD B. MENIN :  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law :  
for the Years 1964 through 1970 and :  
1972 through 1974. :

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on April 19, 1977 at 10:45 A.M. Petitioner appeared by Harvey Lifset, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

Whether the petitioner's activities as an insurance agent during the years 1964 through 1970 and 1972 through 1974 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner filed New York State resident income tax returns for the years under review, but did not file unincorporated business tax returns for said years. Petitioner filed Federal schedules "C" for the years under review and listed his principal business activity thereon as "Estate Planning".

2. On February 24, 1976, the Income Tax Bureau issued statements of audit changes against petitioner on the grounds that his activities during the years under review constituted the carrying on of an unincorporated business, and that his income derived therefrom was subject to unincorporated business tax. The Income Tax Bureau also made adjustments in the statements of audit changes to reflect the increase in petitioner's business income resulting from disallowances made by the Internal Revenue Service for the years 1964, 1965, 1966, 1968 and 1969. In accordance with the aforesaid statements of audit changes, the Income Tax Bureau issued a Notice of Deficiency against the petitioner for the years 1964 through 1967 in the amount of \$3,883.75, plus \$1,937.11 in interest, for a total due of \$5,820.87. It also issued a Notice of Deficiency for the years 1968 through 1970 and 1972 through 1974 against petitioner for \$10,050.33, plus \$2,375.50 in interest, for a total due of \$12,425.83.

3. On January 3, 1977, petitioner reported Federal adjustments of \$4,641.00 for the year 1974. He did so for New York State

personal income tax purposes on Form IT-115 and he paid the tax computed to be due on said form. Of said amount, \$4,506.00 pertained to his business activities, but was not reported for New York State unincorporated business tax purposes.

4. Petitioner reported his occupation to be that of Estate Planning for all the years in question except 1969. He listed all income received from all business sources as net business income.

5. During the years under review, petitioner worked under an agent's career contract as a life insurance soliciting agent for New England Life Insurance Company (hereinafter referred to as "New England") and for its general agent, David Marks, Jr. During said years, petitioner sold life insurance and various other types of insurance for many other principals. He also performed services as a consultant on pension plan matters. On his Federal and New York State income tax returns for said years, petitioner reported the income he received from all of his principals as business income.

6. New England was petitioner's largest single source of income. He derived more than 50% of his income from New England in nine out of the ten years under review.

7. Petitioner was provided with an office suite at the general agent's place of business. The general agent provided him with secretarial help, computer aides, stationery and telephone service. Petitioner's commissions on first-year policies were applied against the cost of office space, as well as goods and services provided to petitioner. If petitioner's sales of new policies were too low, he was required to pay the difference to the general agent. If his sales were high, petitioner was paid the difference by the general agent and said difference was reported on Federal Form 1099 as commissions.

8. New England paid petitioner on a commission basis. New England deducted social security taxes from petitioner's commission income, but did not withhold Federal or state withholding taxes nor provide workman's compensation coverage. Petitioner was covered by group life insurance, major medical and hospitalization benefits. He was included in New England's pension and profit-sharing plan.

9. Petitioner was required to attend weekly sales meetings and periodic educational meetings. He called his secretary daily and reported to the general agent or a supervisor once a week.

10. Petitioner was required to offer business to New England first. In the event that New England refused the application,

petitioner could then place the risk with another company. He was permitted to seek types of insurance not written by New England and to place them with other companies. The general agent's primary control over petitioner's activities was limited to his requiring that petitioner meet a minimum sales quota of business for New England.

11. Petitioner employed part-time assistants in his office at the general agent's place of business. He employed a full-time assistant for several months, whom he was training to become his office manager.

12. Petitioner purchased drapes and carpeting for his office at the general agent's place of business with his own funds, and formed a corporation with three other agents. Said corporation purchased furniture for a conference room which was set up in petitioner's office suite.

13. Petitioner used two letterheads, that of his own and New England's. He divided his seven-day work week between the general agent's office and another office which he maintained in his home. He worked three weekdays in his office at the general agent's place of business and two weekdays, weekends and evenings at his home office. In his activities for all principals, he incurred substantial business expenses which he claimed as deductions against total income on Federal schedules "C" during the years under review.



CONCLUSIONS OF LAW

A. That the income which petitioner, Richard B. Menin, derived from his activities on behalf of New England Life Insurance Company did not constitute 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 activities of petitioner, Richard B. Menin, for all principals during the years 1964 through 1970 and 1972 through 1974 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law. Income derived therefrom was thus subject to unincorporated business tax.

C. That the Income Tax Bureau is hereby directed to increase petitioner's business income for the year 1974 from \$47,750.00 to \$52,256.00, to recompute the additional unincorporated business tax due thereon and to accordingly modify the Notice of Deficiency.

D. That the petition of Richard B. Menin is denied and the notices of deficiency issued February 24, 1976 (as modified) are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
February 6, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER