

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Erik G. Brodin :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Unincorporated Business Tax :

under Article 23 of the Tax Law

for the Years 1971 - 1974. :

State of New York

County of Albany

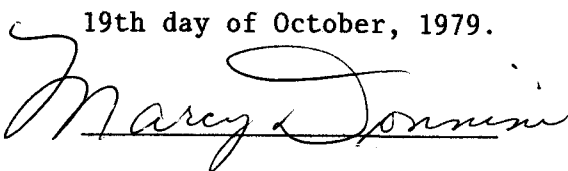
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Harvey M. Lifset the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

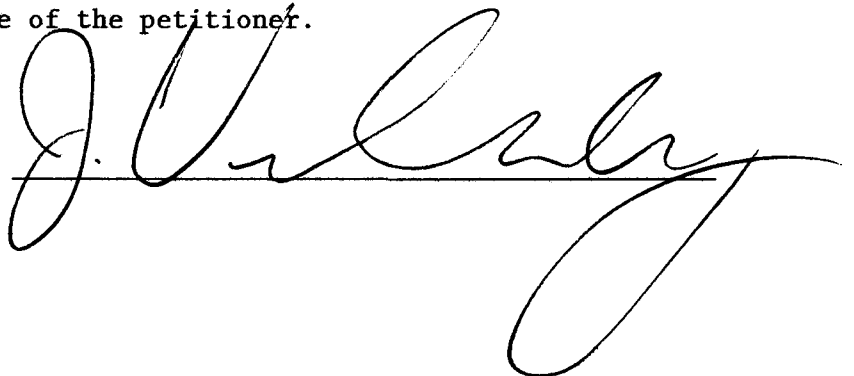
Mr. Harvey M. Lifset
112 State St.
Albany, NY 12207

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
19th day of October, 1979.


Mary L. Jorini


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Jay Vredenburg, 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 19th day of October, 1979, he served the within notice of Decision by certified mail upon Erik G. Brodin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Erik G. Brodin

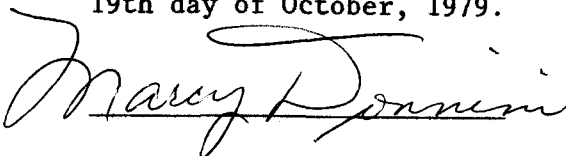
4 Archer La.

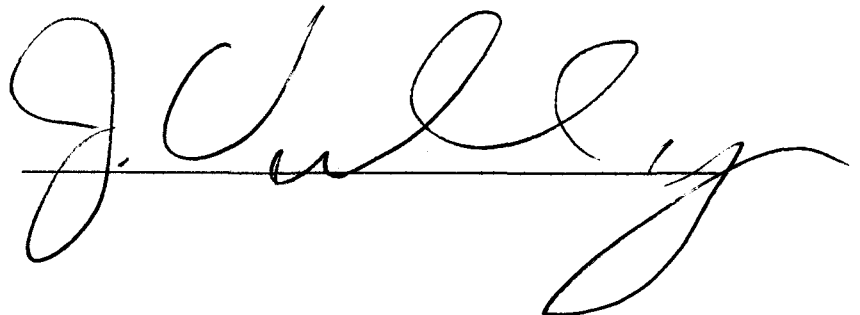
Scarsdale, NY 10583

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of October, 1979.





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

October 19, 1979

Erik G. Brodin
4 Archer La.
Scarsdale, NY 10583

Dear Mr. Brodin:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Harvey M. Lifset
112 State St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
ERIK G. BRODIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971, 1972, 1973 and 1974.	:	

Petitioner, Erik G. Brodin, 4 Archer Lane, Scarsdale, New York 10583, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1971, 1972, 1973 and 1974 (File Nos. 14611 and 16181).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on November 30, 1978 at 1:00 P.M. Petitioner appeared by Harvey M. Lifset, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner's activities as an insurance agent constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Erik G. Brodin, and his wife, Ingar Brodin, filed New York State income tax resident returns for the years at issue; however, Mr. Brodin did not file unincorporated business tax returns for said years.

2. On March 29, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner. It was issued on the grounds that his activities during 1971, 1972 and 1973 constituted the carrying on of an unincorporated

business, and that the income derived therefrom was subject to unincorporated business tax. On June 28, 1976, the Income Tax Bureau issued another Statement of Audit Changes for 1974, on the same grounds as the earlier statement. In accordance with said statements, the Income Tax Bureau issued a Notice of Deficiency on March 29, 1976 for 1971 through 1973. The Notice asserted unincorporated business tax of \$1,991.23, plus penalty of \$818.66 and interest of \$415.26, for a total of \$3,225.15. On June 28, 1976, it issued another Notice of Deficiency for 1974 asserting unincorporated business tax of \$1,984.71, plus penalty of \$595.41 and interest of \$228.42, for a total due of \$2,808.54.

3. During the years at issue, petitioner worked under an Agent's Career Contract as a life insurance soliciting agent for the Lambert M. Huppeler-Edward K. Leaton Agency, and its successor the Edward K. Leaton Agency, general agents for New England Mutual Life Insurance Company ("New England"). During the years at issue, petitioner sold life insurance and various types of insurance for other principals, reporting the commission income which he received as other income on his Federal and New York State income tax returns.

4. New England was petitioner's prime source of income. He derived more than 89% of his income from New England in three of the four years at issue.

5. During the period in questions, Mr. Brodin received an expense allowance of 20% of his first commission earnings, which he was able to apply to his secretarial and office expenses. This permitted him to have a level of secretarial help different from that which the agency would otherwise have afforded him based solely on past production. Other agency services which were made available to him at no cost included receptionists, telephone operators, estate and corporate planning specialists, attorneys, actuaries, etc. In return, Mr. Brodin was required to render all field-level services for his policyholders and provide other services on request.

6. New England paid petitioner on a commission basis and deducted social security taxes therefrom, but did not withhold Federal or State withholding taxes. Petitioner was covered by group life insurance and major medical and hospitalization benefits. He was also included in New England's pension, disability income and deferred compensation plans.

7. Petitioner reported directly to the general agent; however, New England required him to attend regular weekly meetings and he was expected to work in the office, except when he had business outside the office with policyholders or prospective policyholders. New England limited his territory, set his production standards, gave him specific quotas and required him to report to the general agent on his progress. Petitioner was required to offer business to New England first. In the event that said business was refused by New England, he could then place the risk with another company.

CONCLUSIONS OF LAW

A. That petitioner, Erik G. Brodin's activities did not constitute the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law. Sufficient direction and control was exercised over Erik G. Brodin's activities so as to establish an employer-employee relationship, within the meaning and intent of section 703(b) of the Tax Law; thus, the income derived therefrom was not subject to unincorporated business tax.

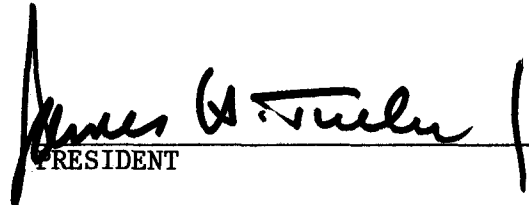
B. That petitioner's activities as an insurance salesman during the years 1971 through 1974 for companies other than New England Life Insurance Company, constituted the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law; thus, the income derived therefrom was subject to unincorporated business tax. However, the amount received during the years at issue was insufficient to result in a tax liability.

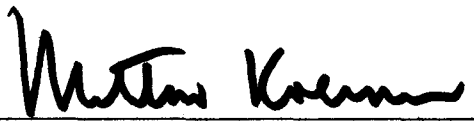
C. That the petitions of Erik G. Brodin are granted and the notices of deficiency issued on March 29, 1976 and June 28, 1976 are cancelled.


DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER