

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ORLANDO A. CORINI

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)~~ 1971. :

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 April , 1979 , ~~she~~ served the within

Notice of Decision by (certified) mail upon Orlando A. Corini

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Orlando A. Corini
1160 Midland Avenue, Apt. 1-E
Bronxville, New York 10708

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)~~
~~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

6th day of April , 1979.

Marilyn J. Papniew

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ORLANDO A. CORINI

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)~~ 1971. :

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 April, 1979, she served the within
Notice of Decision by (certified) mail upon Leon Weiss, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leon N. Weiss, CPA
271 North Avenue
New Rochelle, New York 10801
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

6th day of April, 1979.

Marilyn J. Papineau

John Huhn



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

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

April 6, 1979

Orlando A. Corini
1160 Midland Avenue, Apt. 1-E
Bronxville, New York 10708

Dear Mr. Corini:

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 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 Chykyaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ORLANDO A. CORINI : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1971.

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 April 17, 1978 at 2:45 P.M. Petitioner appeared pro se and by Leon Weiss, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

Whether petitioner's insurance sales activities during 1971 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Orlando A. Corini, timely filed a New York State personal income tax return for 1971. He did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau contended that petitioner's income, derived from his activities as an insurance and general agent, was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency against him for 1971 on December 23, 1974 in the amount of \$1,657.92 in unincorporated business tax, plus \$646.58 in penalty and \$267.43 in interest, for a sum of \$2,571.93.

3. Since 1958 and during the year at issue, petitioner sold life insurance for his only principal, The Manhattan Life Insurance Company of New York (hereinafter "Manhattan"). He performed services under an agreement whereby Manhattan appointed him as General Agent for the territory of Westchester County and vicinity. The agreement specified that petitioner was an independent contractor and not an employee. Petitioner contended that he was not permitted to sell life insurance for any other principal, did not hire soliciting agents and was a career life insurance agent rather than a general agent.

4. Manhattan did not withhold income taxes or social security from petitioner's commission compensation. It covered him with major medical and group life insurance and contributed one percent of first year premiums to a pension plan which petitioner would start to receive at age 65, whether or not he continued working.

5. Petitioner paid all of his expenses which included wages and payroll taxes for his clerical help. He then furnished a complete list of all expenses to Manhattan each month. Manhattan audited the expenditures and disallowed whatever it considered to be extravagant or unnecessary, reimbursing a portion of the expenses in accordance with a formula based on first year premiums. During 1971 petitioner incurred expenses of \$94,503.54. These expenses included items such as advertising-\$416.86, depreciation on furniture and fixtures-\$638.45, commission payments through Manhattan-\$27,511.16, sales promotion expenses-\$20,818.36, contributions to "Keogh" plan-\$4,293.96, employee group life insurance-\$3,281.42, accounting fees-\$850.00, medical fees-\$390.00, payroll taxes, postage, electricity, water, telephone, office equipment rental, office cleaning and net rent-\$464.42. Manhattan reimbursed petitioner \$21,716.24 for these expenses.

6. Once a month petitioner was visited by a representative of Manhattan, at which time production was discussed. He was required to attend sales conventions. Petitioner did not submit documentary or any satisfactory evidence to show that Manhattan had any interest in his day-to-day activities, except as to volume of business, restrictions as to territory and to insure proper partial expense reimbursement.

7. Petitioner and his brother-in-law were partners in another insurance agency which operated out of petitioner's office. The agency sold many types of insurance. It did not sell life insurance. The partnership filed a New York State partnership return for 1971 and paid unincorporated business tax. The partnership's rent expense shown on the return was in the amount of \$3,435.58.

CONCLUSIONS OF LAW

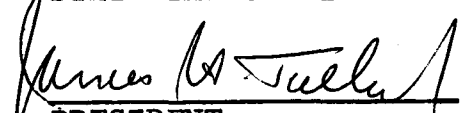
A. That petitioner, Orlando A. Corini's insurance sales activities during 1971 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law.

B. That the petition of Orlando A. Corini is denied and the Notice of Deficiency issued December 23, 1974 is sustained, together with such additional interest as may be lawfully owing.

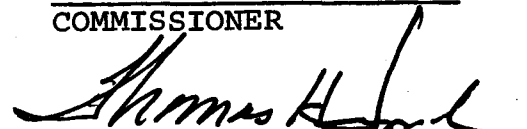
DATED: Albany, New York

April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER