

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK D. GARFUNKEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(ss)~~ 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1968, 1969 and 1970.

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 14th day of February, 1979, she served the within
Notice of Decision by (certified) mail upon Jack D. Garfunkel

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jack D. Garfunkel
58 Oregon Ave.
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)~~
~~XXXXXX~~ 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

14th day of February, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK D. GARFUNKEL

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

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1979, ~~he~~ he served the within
Notice of Decision by (certified) mail upon Max Berey, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Max Berey, Esq.
953 Gloucester Court
Westbury, NY 11590

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

14th day of February , 19 79.

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

Jack D. Garfunkel
58 Oregon Ave.
Bronxville, New York 10708

Dear Mr. Garfunkel:

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 CHYRIWATT
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK D. GARFUNKEL	:	DECISION
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.	:	

Petitioner, Jack D. Garfunkel, 58 Oregon Avenue, Bronxville, New York 10708, filed a petition 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 (File No. 14004).

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 March 7, 1978 at 1:15 P.M. Petitioner appeared pro se and by Max Berey, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

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, Jack D. Garfunkel, timely filed New York State personal income tax returns for 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. Accordingly, it issued a Notice of Deficiency against petitioner on October 27, 1975 for \$1,615.70 in unincorporated business tax, plus \$543.01 in interest, for a total of \$2,158.71.

3. During the years at issue, petitioner wrote a wide variety of insurance policies for between 23 and 30 principals. He contended that he was an employee of his prime principal, Mutual Benefit Life Insurance Company (hereinafter "Mutual"). He conceded that the income derived from all other principals was subject to unincorporated business tax.

4. The percentage of income derived from Mutual compared to total income was 49.9% in 1968, 41.8% in 1969 and 36.7% in 1970.

5. Mutual withheld social security taxes from petitioner's commission income and provided him with a major medical plan. He participated in Mutual's pension retirement fund plan which

matured when he reached age 65 in 1968. At that time he was to receive \$245.00 per month. He and Mutual contributed equally to the fund and the amount contributed was based on his earnings.

6. Mutual permitted petitioner to sell insurance for other principals. As a result, he placed risks with whichever company was most beneficial to his client. Petitioner made his own contacts since he was not supplied with leads by Mutual, which was only concerned with the volume of his sales. Petitioner did not have to make out reports for Mutual or account for his time, and he could take vacations at will.

7. Petitioner had his own office, from which he conducted business. Mutual's name did not appear on the office door or on petitioner's letterhead. His wife, sister and brother-in-law, who all were Mutual insurance agents, worked for petitioner in his office and were compensated by him for their services.

8. Petitioner's office expenses totalled \$18,669.71 in 1968. He contended that he received 20% above first year's commissions from Mutual, as reimbursement for the office expenses which he incurred. Reimbursement from Mutual amounted to \$1,575.52 for said year. Similar expenses and reimbursement existed during 1969 and 1970.

9. Petitioner filed Federal Schedule "C," in order to claim deductions for office expenses which he incurred. The expenses included items such as wages, commissions, advertising, client entertainment, promotions and expenses for clients' physical examinations.

CONCLUSIONS OF LAW

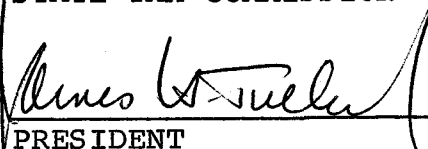
A. That petitioner, Jack D. Garfunkel's activities as an insurance salesman during 1968, 1969 and 1970 constituted the carrying on of an unincorporated business and that all income derived therefrom, including the income derived from Mutual Benefit Life Insurance Company, was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.

B. That the petition of Jack D. Garfunkel is denied and the Notice of Deficiency issued October 27, 1975 is sustained.

DATED: Albany, New York

February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER