

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ralph Dolgoff :

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 1970 - 1972. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Ralph Dolgoff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

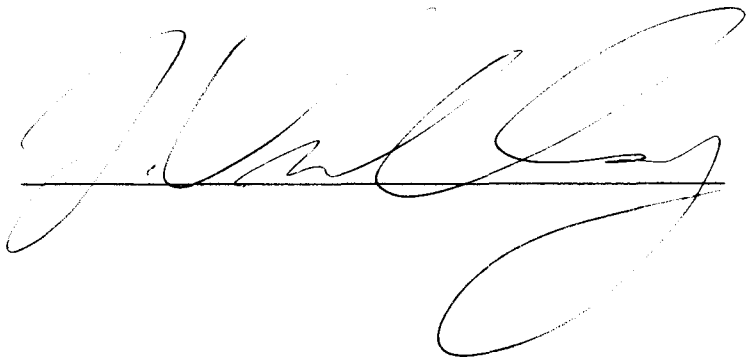
Ralph Dolgoff
449 Clearmeadow Dr.
East Meadow, NY 11554

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
3rd day of October, 1980.

Robert Bank



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

October 3, 1980

Ralph Dolgoff
449 Clearmeadow Dr.
East Meadow, NY 11554

Dear Mr. Dolgoff:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RALPH DOLGOFF : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1970, 1971 and 1972. :

Petitioner, Ralph Dolgoff, 449 Clearmeadow Drive, East Meadow, New York 11554, 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 1970, 1971 and 1972 (File No. 17274).

On August 3, 1979, petitioner, Ralph Dolgoff, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether income from petitioner's activities during the years 1970, 1971 and 1972 is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Ralph Dolgoff, and Sylvia Dolgoff, his wife, filed New York State personal income tax resident returns for the years 1970, 1971 and 1972, on which petitioner reported business income from his activities which were described by him as follows:

1970	"Sales - Insurance"
1971	"Consultant"
1972	"Sales Consultant"

Petitioner did not file an Unincorporated Business Tax Return for the years 1970, 1971 and 1972.

2. On December 20, 1976, the Audit Division issued a Notice of Deficiency against petitioner, Ralph Dolgoff, in the sum of \$2,756.37 for the years 1970, 1971 and 1972, along with an explanatory Statement of Audit Changes which stated:

"Based on the decision of the State Tax Commission dated April 29, 1976 for the tax years 1967 and 1969, your business activities are held to constitute the carrying on of an unincorporated business and the income derived is subject to the unincorporated business tax."

3. Petitioner, Ralph Dolgoff, was a full-time career agent under contract with the Marks-Kronish Agency ("the Agency") to sell life insurance for the New England Mutual Life Insurance Company ("New England Life") during the years 1970, 1971 and 1972. Petitioner also sold mutual funds for New England Life, but through a different entity called M. H. LeBlang, Inc., which was a "broker/dealership" operating from the same premises as the Marks-Kronish Agency.

4. All agents were requested to become mutual fund registered representatives and sell mutual funds, as well as life insurance for New England Life.

5. New England Life deducted amounts under the Federal Insurance Contributions Act ("F.I.C.A.") from his commission income, and provided petitioner with group life insurance, health insurance, disability insurance and a retirement plan.

6. Petitioner was provided with an office and secretarial services on the premises of the Agency. In addition, petitioner maintained an office at his home "as a means of (1) saving travel time, (2) a place to make telephone calls (which is the lifeblood of an insurance agent), (3) a place to keep duplicate records and (4) a place to write up proposals on weekends, etc."

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7. New England Life required petitioner to attend periodic sales meetings, conventions and training classes in selling methods and procedures. Petitioner was required, by contract, to adhere to production standards and rules in respect to solicitation, underwriting and in dealings with policyholders and prospects.

8. A lengthy letter, dated June 12, 1979, was submitted by the Agency outlining the terms and conditions of petitioner's activities as a career agent, which stated in part:

"While he had long experience in selling and therefore needed no direct supervision, nevertheless the Company was at all times in a position to change or correct his practices or procedures as it deemed necessary."

"In Mr. Dolgoff's case, he was provided with office space, furniture, telephone service, mail service, limited secretarial service, stationery, business cards and certain advertising and photostat services; for these things a charge was made against his account. To offset the charge, he was credited with an expense allowance equal to 20 percent of first year commissions."

"While it was contemplated that in special circumstances the agent would place with other companies policies which could not be placed with New England Life, the Company still required as a matter of practice that Mr. Dolgoff give the major portion of his business to New England Life."

9. Nothing contained in the record indicates that petitioner sold life insurance or mutual funds during the years 1970, 1971 and 1972 for other companies except New England Life.

10. In 1947, Flying Cargo, Inc. was formed and petitioner was retained as its accountant. Subsequently, he became a member of the Board of Directors until 1963, when he was appointed President. In 1965, Flying Cargo, Inc. was sold and renamed Air Cargo Specialists, Inc. Petitioner was requested to remain on the Board of Directors as a member and consultant on non-insurance matters. The record does not indicate whether he rendered services for Air Cargo Specialists, Inc. during the years at issue.

11. Petitioner contended that the facts as stated on the decision of the State Tax Commission dated April 19, 1976 for the years 1967 and 1969 were erroneous, and that his oral testimony was misinterpreted.

12. The record does not indicate that the Audit Division conducted an audit, examination, inquiry or interview for the purpose of ascertaining facts relating to petitioner's business activities during the years 1970, 1971 and 1972.

CONCLUSIONS OF LAW

A. That the issuance of a Notice of Deficiency for the years 1970, 1971 and 1972, based solely on a decision containing facts and conclusions pertaining to the years 1967 and 1969, is arbitrary, capricious, and contrary to the meaning and intent of sections 681(a) and 697(b) of the Tax Law.

B. That petitioner's services during the years 1970, 1971 and 1972 were rendered as an employee and the income derived therefrom is not subject to the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law and 20 NYCRR 203.10.

C. That the petition of Ralph Dolgoff is granted and the Notice of Deficiency issued December 12, 1976 is cancelled.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

James G. Tully
PRESIDENT

Thomas H. Spill
COMMISSIONER

Frank R. Koenig
COMMISSIONER

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