

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Carl E. Haas :

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 1972 & 1973. :

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 September, 1980, he served the within notice of Decision by certified mail upon Carl E. Haas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

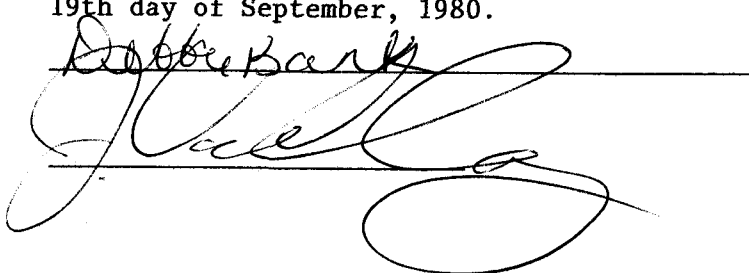
Carl E. Haas
70 East 10th St.
New York, NY 10003

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 September, 1980.



STATE OF NEW YORK
STATE TAX COMMISSION

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Unincorporated Business Tax :
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for the Years 1972 & 1973. :

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 September, 1980, he served the within notice of Decision by certified mail upon Edward J. Haas the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

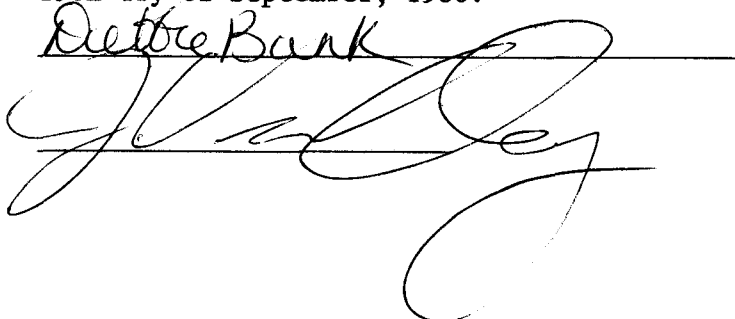
Mr. Edward J. Haas
420 Lexington Ave.
New York, NY 10017

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 September, 1980.

Dietrich Bank



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

September 19, 1980

Carl E. Haas
70 East 10th St.
New York, NY 10003

Dear Mr. Haas:

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
Edward J. Haas
420 Lexington Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CARL E. HAAS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1972 and 1973.	:	

Petitioner, Carl E. Haas, 70 East 10th Street, New York, New York 10003, 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 1972 and 1973 (File No. 18075).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 22, 1979 and November 19, 1979 at 1:15 P.M. and 1:30 P.M. respectively. Petitioner appeared pro se and with Edward J. Haas, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether business income reported by the petitioner for the years 1972 and 1973, from his life insurance sales activities, is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Carl E. Haas, timely filed New York State combined income tax returns with his wife for the years 1972 and 1973. Additionally, he filed an unincorporated business tax return for 1972 wherein he reported his net profit as computed on his Federal Schedule C, derived from his activities as a "General Agent" of life insurance. For 1973 however, an unincorporated business

tax return was filed whereon no income or deductions were reported, but said return merely contained the statement "exempt under section 703(f) Tax Law".

2. On January 10, 1975, petitioner filed a Claim for Credit or Refund of Unincorporated Business Income Tax for 1972 wherein he claimed a refund of \$1,445.24, which represented the full tax paid with his return for said year. Additionally, under the same date, petitioner filed a "Notice of Change in Taxable Income", Form IT-115, for each year at issue, wherein he reported Federal audit adjustments which increased his taxable income for personal income tax purposes.

3. On May 26, 1976, the Audit Division mailed a formal notice to petitioner, advising him that his claim for refund for 1972 has been disallowed in full. Furthermore, on February 28, 1977, the Audit Division issued a Statement of Audit Changes for 1973, wherein it held petitioner's net profit subject to the imposition of unincorporated business tax. In computing said tax, petitioner's net profit reported was increased by a Federal audit change to business expenses claimed in determining such net profit. Accordingly, on February 28, 1977, a Notice of Deficiency was issued against the petitioner for 1973, asserting unincorporated business tax of \$965.68, plus interest of \$208.14, for a total due of \$1,173.82.

4. Petitioner Carl E. Haas had been a general agent for Continental Assurance Co. since 1946. During 1959 petitioner incorporated his general agency under the name of Carl E. Haas, C.L.U., Inc. (hereinafter the corporation). Petitioner, who was the sole stockholder in the corporation, received compensation from same in the form of wages, for which he was issued a withholding tax statement. Additionally, he received commissions on "house accounts", which were those not assigned to a specific soliciting agent under contract with the corporation. This commission income, for which petitioner received an information

return, Form 1099, was reported as business income on his Federal Schedule C for 1972 and 1973, and on his unincorporated business tax return for 1972. Additionally, petitioner's business income reported for 1972 and 1973, included other income derived from insurance policies placed with companies other than Continental.

5. Petitioner, Carl E. Haas, contended that the commissions received from the corporation were actually derived as the result of services rendered as an employee. As such, he contended that such commission income is exempt from the imposition of unincorporated business tax.

6. During the course of the hearing held herein, petitioner was unable to furnish a breakdown of his business income reported for the years at issue. He contended that the bulk of the income was derived from the corporation and although sufficient time was allowed for petitioner to submit such breakdown subsequent to the hearing, he failed to do so.

CONCLUSIONS OF LAW

A. That petitioner, Carl E. Haas, has failed to sustain his burden of proof required under section 689(e) of the Tax Law, to show the sources and the amounts comprising the business income reported, for which he claims exemption from the imposition of unincorporated business tax.

B. That commissions received by petitioner Carl E. Haas during the years 1972 and 1973, which were reported as business income, were derived from his regular business as an independent life insurance salesman, rather than from services rendered as an employee. Accordingly, such income is subject to the imposition of unincorporated business tax within the meaning and intent of section 703(a) of the Tax Law.

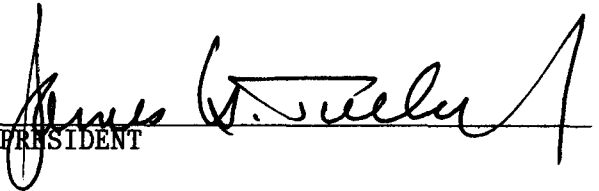
C. That the Notice of Disallowance of petitioner's refund claim of \$1,445.24, for 1972, dated May 26, 1976, is hereby sustained.

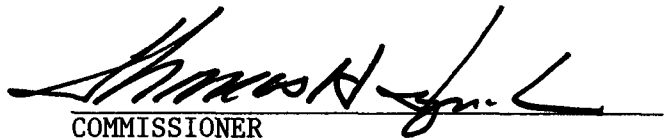
D. That the petition of Carl E. Haas is denied and the Notice of Deficiency dated February 28, 1977, for the year 1973, is sustained together with such additional interest as may be lawfully owing.

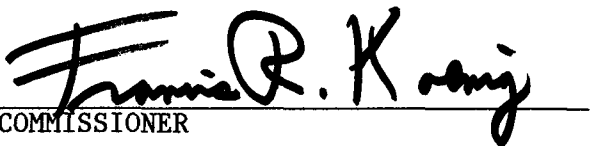
DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER