

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul & Reva Karinsky :
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 1967 - 1969. :

AFFIDAVIT OF MAILING

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Paul & Reva Karinsky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul & Reva Karinsky
2157 E. 24th St.
Brooklyn, New York 11229

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
28th day of November, 1980.

Dorothy A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul & Reva Karinsky :
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 1967 - 1969. :

AFFIDAVIT OF MAILING

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Powel F. Wartel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

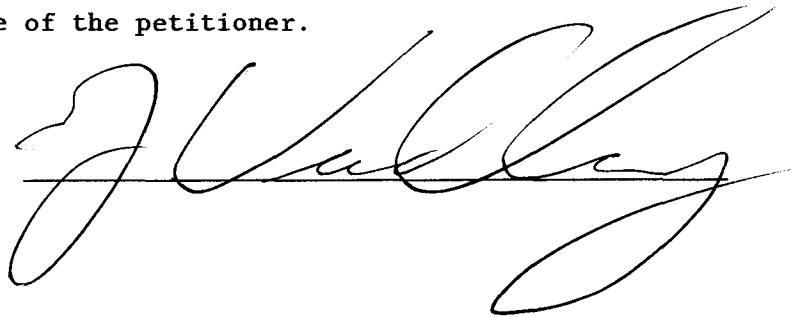
Mr. Powel F. Wartel
6 E. 43rd St.
New York, NY 10017

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
28th day of November, 1980.

Dorothy A. Bank



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

November 28, 1980

Paul & Reva Karinsky
2157 E. 24th St.
Brooklyn, New York 11229

Dear Mr. & Mrs. Karinsky:

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
Powel F. Wartel
6 E. 43rd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
OF :
PAUL KARINSKY AND REVA KARINSKY : DECISION
for Redetermination of a Deficiency :
or for Refund of Unincorporated :
Business Tax under Article 23 of :
the Tax Law for the Years 1967, :
1968 and 1969. :

Petitioners, Paul Karinsky and Reva Karinsky, 2158 East 24th Street, Brooklyn, New York 11229, 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 1967, 1968 and 1969 (File No. 15216).

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 May 12, 1980 at 2:45 P.M. Petitioner Paul Karinsky appeared with Powel F. Wartel, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the insurance sales related activities engaged in by petitioner Paul Karinsky constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioners, Paul Karinsky and Reva Karinsky, timely filed joint New York State income tax resident returns for the years 1967, 1968 and 1969 whereon petitioner Paul Karinsky reported business income derived from "life insurance sales" activities. He did not file unincorporated business tax returns for any of said years at issue.

2. On May 19, 1971, the Audit Division issued a Statement of Audit Changes to petitioners wherein the income derived from Paul Karinsky's (hereinafter petitioner) activities was held subject to the imposition of unincorporated business tax on the basis that such activities "constitute the carrying on of an unincorporated business". Accordingly, a Notice of Deficiency was issued against petitioners on March 20, 1972 asserting unincorporated business tax of \$1,106.64, plus interest of \$189.79, for a total due of \$1,196.43.

3. Petitioner contended that during the years at issue, he was an employee of the Paul Goodman General Agency of the Guardian Life Insurance Company of America through April 15, 1969, at which time he terminated such employment and commenced employment with the J.P. Cabot General Agency of the Beneficial Life Insurance Company. He contended that the relationship maintained with the above stated principals was that of employer-employee, and as such, the income he derived therefrom is exempt from the imposition of unincorporated business tax.

4. During each year at issue, petitioner derived income from several other principals. Although he conceded that this income is subject to the unincorporated business tax, he maintained that no tax is due since the taxable income derived from such other principals computes to zero.

5. On October 19, 1966 petitioner entered into a "Field Representative's Agreement" with the Guardian Life Insurance Company of America (the Guardian). Pursuant to the provisions of said agreement "the Field Representative shall not solicit applications for, nor submit business to, any other insurance company, agent or association, nor engage in any business other than that covered by this agreement."

6. On March 1, 1967, petitioner entered into a "Supervisory Agreement" with the Paul Goodman Agency, Inc., General Agent for the Guardian, wherein, in addition to his regular sales activities as a field representative, petitioner was obligated to recruit, train and supervise agents assigned to him by the agency. For these services petitioner received compensation in the form of variable commission percentages based on business produced by the individuals in his assigned unit.

7. The Paul Goodman Agency of the Guardian provided petitioner with a private office, secretarial assistance, telephone facilities and stationary at no cost to petitioner.

8. Petitioner was paid by the Guardian on both a salary and a commission basis. Petitioner's salary was reported on a Wage and Tax Statement and all income and social security taxes were withheld by the company.

9. The Guardian provided petitioner with a two week annual paid vacation, paid sick leave days, pension benefits, group life, accident and health insurance coverage, and disability and unemployment insurance coverage.

10. Petitioner was required by the Paul Goodman Agency to work the stated hours of 9:00 A.M. to 5:00 P.M. and attend all agency management meetings which were held each Monday.

11. Petitioner was subject to company established production standards.

12. In his capacity as a field representative, petitioner visited his clients in the evenings. In addition to soliciting clients of his choice, he was furnished with leads by the agency.

13. Petitioner's income derived from other principals consisted primarily of renewal commissions. Although some income was derived from insurance sales during the years at issue, the policies sold were placed with other companies only after being offered to and refused by the Guardian.

14. Petitioner contended that 60 percent of the unreimbursed expenses he incurred were related to services rendered to his prime company, the Guardian and subsequently, the J.P. Cabot Agency.

15. On April 15, 1969 petitioner resigned from the Guardian and commenced employment with the J.P. Cabot Agency of the Beneficial Life Insurance Company. Petitioner testified that his relationship, duties and dual capacity status with the J.P. Cabot Agency was identical to those while he was with the Paul Goodman Agency.

CONCLUSIONS OF LAW

A. That the income derived by petitioner from the Guardian Life Insurance Company of America and it's general agent, the Paul Goodman Agency, as well as the income derived from the J.P. Cabot Agency of the Beneficial life Insurance Company, was derived from services rendered as an employee, under a bona fide employer-employee relationship. As such, petitioner is deemed not to have been carrying on an unincorporated business with respect to services rendered to said employers within the meaning and intent of section 703(b) of the Tax Law. Accordingly, such income is exempt from the imposition of unincorporated business tax pursuant to section 701 of the Tax Law.

B. That although the income derived by petitioner from principals other than those specified in Conclusion of Law "A" (supra) is subject to the unincorporated business tax, such income, after being properly reduced by appropriate exemptions, allowances and expenses, yields a taxable income of zero for unincorporated business tax purposes.

C. That the petition of Paul Karinsky and Reva Karinsky is granted and the Notice of Deficiency dated March 20, 1972 is hereby cancelled.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER