

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Joseph Leibowitz :

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 1969 & 1970. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Joseph Leibowitz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

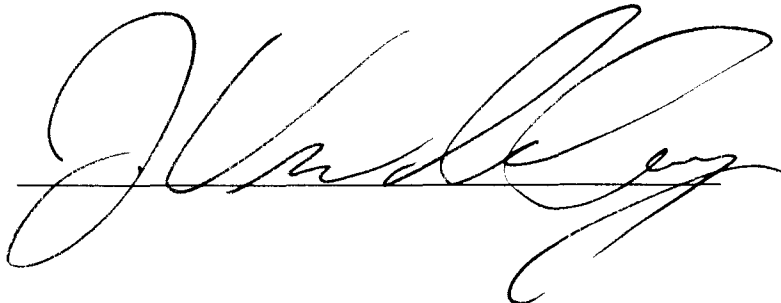
Joseph Leibowitz  
2 Town House  
Great Neck, NY 11021

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  
14th day of November, 1980.





STATE OF NEW YORK  
STATE TAX COMMISSION

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Unincorporated Business Tax :

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for the Years 1969 & 1970. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon James R. Bonerbo 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. James R. Bonerbo  
53 S. Broadway  
Yonkers, NY 10701

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 November, 1980.

*Notaral Bart*

*J. Vredenburg*

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

November 14, 1980

Joseph Leibowitz  
2 Town House  
Great Neck, NY 11021

Dear Mr. Leibowitz:

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  
James R. Bonerbo  
53 S. Broadway  
Yonkers, NY 10701  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH LEIBOWITZ	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1969 and 1970.	:	

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Petitioner, Joseph Leibowitz, 2 Town House, Great Neck, New York 11021, 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 1969 and 1970 (File No. 15728).

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 April 24, 1980 at 1:15 P.M. Petitioner appeared with James R. Bonerbo, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner's activities as an insurance salesman constituted the carrying on of an unincorporated business, of which the income derived therefrom is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Joseph Leibowitz, timely filed New York State combined income tax returns with his wife, Bea Leibowitz, for the years 1969 and 1970, wherein he reported business income from his listed occupation as an "insurance broker". He did not file unincorporated business tax returns for either of said years.

2. On January 24, 1973, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that the income from his "activities as Insurance Broker is subject to the unincorporated business tax". Accordingly, a Notice of Deficiency was issued against petitioner on December 23, 1974 asserting unincorporated business tax of \$694.17, plus interest of \$176.24, for a total due of \$870.41

3. Petitioner contended that during the years at issue he was a bona fide employee, performing services as a full-time agent, for the P. Gerald DeSimone General Agency of the State Mutual Life Assurance Company of America (hereinafter "State Mutual"). He claimed that his previous accountant erroneously filed his returns for the years at issue by listing his activities as an insurance broker and reporting his income on Federal Schedules C. He contended that this error was made based on the fact that for years prior to those at issue, he was, in fact, an insurance broker, operating a general agency for Columbia Mutual, but such agency was sold in 1968.

4. On September 1, 1968, petitioner entered into a Career Agent's Agreement with P. Gerald DeSimone, general agent for State Mutual. As a full-time career agent, petitioner sold life and disability insurance policies. State Mutual had the right of first refusal, as provided in said agreement which states, in pertinent part, that:

"The Agent shall solicit application for coverages offered by the Company and for which the Agent is licensed to solicit for or on behalf of the Company. The Agent shall do no business for or on behalf of any other company selling any of such coverages except in connection with applicants which have been declined by the Company, or acceptable by the Company only at higher than standard rates which are unacceptable to such applicants."

5. Petitioner was compensated by State Mutual on a commission basis. He received a monthly draw of \$1,000.00, which was applied against such commissions earned.

6. State Mutual withheld social security taxes from petitioner's earnings. A nominal amount of income taxes were withheld from petitioner's earnings during 1969 and no income taxes were withheld during 1970. Petitioner was covered by State Mutual for disability and unemployment insurance. Additionally, State Mutual provided him with a pension plan.

7. Petitioner was required to attend periodic training sessions at the office of his general agent. He was further required to attend weekly sales meetings and report to his supervisor, P. Gerald DeSimone, on a daily basis, either in person or by telephone.

8. Petitioner was required to meet company-established production quotas. If such quotas were not met, petitioner's contract could have been terminated.

9. Petitioner was not reimbursed for business expenses incurred in the performance of his duties.

10. In addition to the income derived from State Mutual, petitioner derived income from insurance sales activities from the following companies:

A. Assureds Facilities, Inc. - a subsidiary of State Mutual.

B. Massachusetts Mutual Life Insurance Co. - for sales of group policies which State Mutual did not provide, and

C. Columbia Mutual - renewal commissions received on policies sold while a general agent of such company prior to 1969.

11. Insurance sales income derived by petitioner during the years at issue from sources other than State Mutual totaled between \$1,000.00 and \$1,500.00.

#### CONCLUSIONS OF LAW

A. That petitioner's activities during 1969 and 1970 as a full-time career agent for State Mutual constituted services rendered as an employee pursuant to section 703(b) of the Tax Law. Accordingly, petitioner's income

derived from such services is exempt from the imposition of unincorporated business tax.

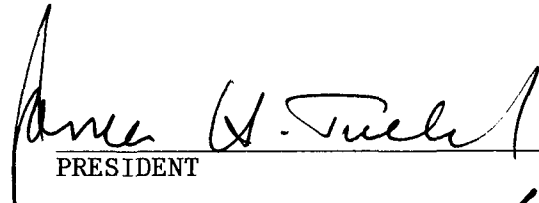
B. That although petitioner's insurance sales income derived from sources other than State Mutual during 1969 and 1970 is subject to the imposition of unincorporated business tax, such income is too nominal to produce an unincorporated business tax liability.


C. That the petition of Joseph Leibowitz is granted and the Notice of Deficiency dated December 23, 1974 is hereby cancelled.

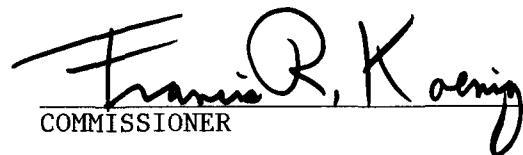
DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER