STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Philip S. Parsons :

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 1971, 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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Philip S. Parsons, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip S. Parsons
Hamilton Rd.
No. Syracuse, NY 13212

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.

Deborah A Bank

J. Vredenburg

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

November 28, 1980

Philip S. Parsons
Hamilton Rd.
No. Syracuse, NY 13212

Dear Mr. Parsons:

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	:	
PHILIP S. PARSONS	:	DECISION
for Redetermination of a Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1971 and 1972.	:	

Petitioner, Philip S. Parsons, Hamilton Road, North Syracuse, New York 13212, 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 1971 and 1972 (File No. 19164).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 11, 1980 at 1:15 P.M. Petitioner, Philip S. Parsons, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner's selling activities during 1971 and 1972 constituted the carrying on of an unincorporated business or whether he was engaged in the practice of a profession or the performance of services in the capacity of an employee, thereby exempting him from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Philip S. Parsons, timely filed joint New York State personal income tax returns with his wife for 1971 and 1972. He did not file unincorporated business tax returns for said years.

2. On July 9, 1976, the Audit Division issued a Statement of Audit Changes against the petitioner and his wife, imposing unincorporated business tax on the grounds that the activities of the petitioner constituted the carrying on of an unincorporated business. The Audit Division also made adjustments on their New York State personal income tax returns for 1971 and 1972 so as to conform with an audit of their Federal income tax returns.

On September 27, 1976, petitioner and his wife submitted payment ($537.89) for the personal income tax portion of the aforesaid Statement of Audit Changes. However, the interest was not paid.

In accordance with the aforesaid Statement of Audit Changes, the Audit Division issued against petitioner, Philip S. Parsons, a Notice of Deficiency on May 23, 1977 for 1971 and 1972, asserting personal income and unincorporated business taxes in the amount of $3,168.18, plus interest of $947.44, less payment of $537.89, leaving a balance due of $3,577.73.

3. Petitioner contended that his income was exempt from unincorporated business tax because he either (a) performed services in the capacity of an employee or (b) was engaged in the practice of a profession.

4. The petitioner passed the examination required by the State of New York Insurance Department which licensed him as an insurance agent under section 115 of the Insurance Law. Petitioner contended that since his occupation has been designated and regulated as a profession under the Insurance Law, it should be considered a professional occupation within the intent and meaning of section 703(c) of the Tax Law. Capital was not a material income producing factor, and more than 80 percent of petitioners income was derived from personal services rendered by the petitioner.

5. During the years at issue, the petitioner was under contract as an agent with the Travelers Insurance Company (hereinafter "company"). The contract read, in part, as follows:

(a) The territory within which the Agent may act shall be North Syracuse and Vicinity, New York.

(b) The Agent has full power and authority to solicit applications or proposals for insurance for such classes of risks as the Company from time to time may authorize to be solicited; to countersign policies of insurance, renewal receipts, certificates, and endorsements pertaining to such classes of risks; to collect, receive, and receipt for premiums on insurance tendered by the Agent to and accepted by the Company, except on such classes of risks as the Company may bill directly.

The agent shall promptly forward applications, proposals or daily reports and pay over premiums to the Company's Office at Syracuse, New York.

(c) Commissions shall be payable in accordance with the commission schedule adopted by the Company and supplied to the Agent.

(d) It is a condition of this contract that the Agent shall refund ratably to the Company, on business heretofore or hereafter written, commissions on canceled insurance and on reductions in premiums at the same rate at which such commissions were originally paid and that the Company at any time, by written notice to the Agent, may change the commission schedule as to premiums due on and after date of such notice.

(e) The Agent has no authority to make, alter, vary, or discharge any policy contract; to extend the time for payment of premiums except as authorized in writing by the Company; to waive or extend any policy obligation or condition; to incur any liability in behalf of the Company; or to insert any advertisement respecting the Company in any publication whatever without the written consent of the Company first obtained.

(f) The Company shall not be responsible for agency expenses such as rentals, transportation facilities, clerk hire, solicitors' fees, postage, advertising, exchange, personal local license fees or any other agency expenses whatsoever.

(g) The Agent shall be responsible for all risks placed on the books of the Company through his agency by any sub-agents or brokers together with all premiums or moneys collected by them in connection with such risks the same as if they had been produced directly by the Agent.

(h) Any Company supplies furnished to the Agent by the Company shall always remain the property of the Company and shall be returned to the Company or its representatives promptly upon demand.

(i) The Company shall indemnify and hold the Agent harmless from and against all sums, including costs and expenses of suit defense and settlement, which the Agent shall become legally obligated to pay by reason of liability imposed on him by law for damages sustained by policyholders, caused solely and directly by error or omission of the Company in the preparation and handling of continuous-type policies, including timely premium notice.

(j) All moneys collected or received by the Agent for or on behalf of the Company shall be held in a fiduciary capacity and shall not be used by the Agent for any purpose whatsoever except as specifically authorized by the Company and shall be paid over to the Company in accordance with the terms of this contract.

(k) In the event of termination of this contract, provided the Agent shall pay all collected premiums to the Company immediately, the Agent's records, use, and control of expirations shall remain his property and be left in his absolute possession; otherwise the records, use, and control of expirations shall be vested in the Company.

6. Petitioner was also a contract agent with other insurance companies. Over 80 percent of the insurance sold by petitioner was casualty insurance, with the remainder being life insurance. The Travelers Insurance Company was his largest single source of income. The Travelers Insurance Company sales produced approximately 83 percent of petitioner's total business in the years at issue. The Travelers Insurance Company permitted petitioner to sell insurance for other principals. As a result, he placed risks with whichever company was most beneficial to his clients. There was no agreement between his principals as to the division of his time or efforts.

7. Petitioner had his own office from which he conducted business. Petitioner was not reimbursed by his principals for selling expenses which he incurred, other than the stationery supplied by his principals. He filed a Federal Schedule "C" to claim these expenses. His principals did not withhold

income taxes or social security from his compensation, nor did they cover him for disability insurance and workmen's compensation. Petitioner did have a profit sharing plan with Travelers Insurance Company and health insurance with another principal.

8. Petitioner could represent as many principals as he chose; however, the principals would state the minimum volume of business the petitioner had to do with their company.

CONCLUSIONS OF LAW

A. That petitioner, Philip S. Parsons, was engaged in the carrying on of an unincorporated business during 1971 and 1972 in accordance with the meaning and intent of section 703(a) of the Tax Law. That he did not perform services as an employee for any of his principals in accordance with section 703(b) of the Tax Law, nor did the activities of the petitioner as an insurance agent, although requiring special knowledge and experience, constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of Philip S. Parsons is denied and the Notice of Deficiency dated May 23, 1977 is sustained.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

James H. Tullen
PRESIDENT

Thomas H. Lee
COMMISSIONER

Francis R. Koenig
COMMISSIONER