

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Raphael J. Sanchez :  
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

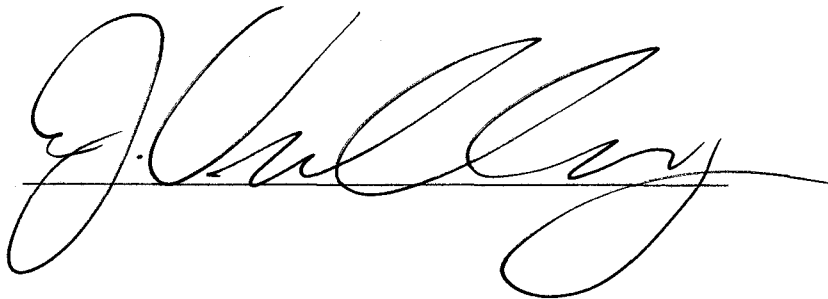
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of February, 1980, he served the within notice of Decision by certified mail upon Raphael J. Sanchez, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raphael J. Sanchez  
856 E. Croton Dr., RFD #4  
Carmel, NY 10512  
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  
13th day of February, 1980.

Joanne Knapp



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

February 13, 1980

Raphael J. Sanchez  
856 E. Croton Dr., RFD #4  
Carmel, NY 10512

Dear Mr. Sanchez:

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	:	
RAPHAEL J. SANCHEZ	:	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, Raphael J. Sanchez, 856 East Croton Drive, RFD #4, Carmel, New York 10512, 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. 14669).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1978 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levit, Esq., of counsel).

ISSUE

Whether petitioner's income derived from his activities as a salesman of mutual funds, real estate and insurance is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Raphael J. Sanchez, filed joint New York State income tax returns with his wife Pauline C. Sanchez for the years 1970, 1971 and 1972. Therein, petitioner reported net business income from his activities as a mutual fund salesman and a real estate and insurance broker. He did not file unincorporated business tax returns for these years.

2. On audit, the Income Tax Bureau issued a Notice of Deficiency, dated September 30, 1974 for \$1,153.27, for 1970, 1971 and 1972, based on the Bureau's determination that petitioner's net business income was subject to the unincorporated business tax.

3. Petitioner, Raphael J. Sanchez, is a licensed broker in insurance, real estate and mutual funds, with offices at 68 Glenside Avenue, Carmel, New York. The office is located in a building owned by petitioner, which is regularly used by him in the conduct of his business activities. All expenses in maintaining and operating the office are paid by petitioner, with no reimbursements from any source.

4. Petitioner is an insurance agent for Nationwide Insurance Company ("Nationwide") and its subsidiaries, under a written contractual agreement. Pursuant to the agreement, petitioner is:

- (a) required to act as an independent contractor with "the right to exercise independent judgment as to time, place and manner of soliciting insurance, servicing policyholders and otherwise carrying out the provisions of this agreement."
- (b) required to pay all business expenses and may not incur any indebtedness on behalf of Nationwide in connection with such expenses.
- (c) responsible for securing and keeping, in effect, any required license to represent Nationwide as an agent.
- (d) required to represent Nationwide exclusively, and could not sell for other companies without their written consent. However, the agreement permitted "the incidental use of voluntary or statutory State or Federal insurance plans..."

(e) offered, from time to time, training, counsel and guidance by Nationwide, but may reject or accept such offers at his discretion.

5. Under substantially similar terms and conditions, petitioner sells mutual funds for Heritage Securities, Inc., a subsidiary of Nationwide.

6. Petitioner is compensated by Nationwide and by Heritage Securities, Inc. on a commission basis, with no withholding of payroll taxes and no reimbursement of business expenses other than for advertising. All self-employment taxes due for 1970, 1971 and 1972 were paid by petitioner.

7. Neither Nationwide, nor its subsidiaries, restricted petitioner's selling territory, or his engaging in non-conflicting activities, and accordingly, in addition to selling insurance and mutual funds, petitioner sold real estate. No control was exercised over his insurance endeavors, nor did they control or regulate the manner in which he attempted to solicit business. The primary interest of Nationwide was the volume of sales generated by petitioner.

8. All solicitation for business was conducted by petitioner via correspondence, mail and advertising. If petitioner's advertising for insurance and mutual funds met with the approval and standards of Nationwide, they contributed fifty percent of the cost.

9. Petitioner described the nature and character of the relationship between himself and Nationwide, as that of "a franchise, rather than an employee-employer relationship".

10. Petitioner's sole contention was that other agents representing Nationwide under the same type of written agreement were deemed by the Income Tax Bureau as not being subject to the unincorporated business tax. However, no evidence was submitted by petitioner as to the facts and circumstances of these other individuals, or as to the specific reasons they were exempt from the unincorporated business tax.

CONCLUSIONS OF LAW

A. That none of the firms which petitioner represented exercised sufficient direction and control over his activities so as to cause him to become their employee within the meaning and intent of section 703(b) of the Tax Law.

B. That the income derived from petitioner's activities as an insurance broker, mutual funds salesman, and real estate broker for the years 1970, 1971 and 1972 constituted income from a regular business of selling, and as such is subject to the unincorporated business tax in accordance with section 701 of the Tax Law.

C. That the petition of Raphael J. Sanchez is denied and the Notice of Deficiency issued September 30, 1974 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

**FEB 13 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER