

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

James R. Slote

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 6th day of June, 1980, he served the within notice of Decision by certified mail upon James R. Slote, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James R. Slote  
124 Westervelt Ave.  
Tenafly, NJ 07670

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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 6th day of June, 1980, he served the within notice of Decision by certified mail upon Robert Weissberg 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. Robert Weissberg  
P.O. Box 981  
White Plains, NY 10602

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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

James R. Slote  
124 Westervelt Ave.  
Tenafly, NJ 07670

Dear Mr. Slote:

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  
Robert Weissberg  
P.O. Box 981  
White Plains, NY 10602  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES R. SLOTE	:	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, James R. Slote, 124 Westervelt Avenue, Tenafly, New Jersey 07670, 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. 15947).

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 October 25, 1979 at 9:15 A.M. Petitioner appeared by Robert Weissberg, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether income from petitioner's activities as a salesman is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, James R. Slote and Carol S. Slote, his wife, jointly filed New York State income tax nonresident returns for years 1969 and 1970, on which he reported commission income from his activities as a salesman. Petitioner did not file unincorporated business tax returns for said years.

2. On March 26, 1973, the Income Tax Bureau issued a Notice of Deficiency for 1969 and 1970 in the sum of \$3,460.82, on which the income from his activities

as a salesman was held subject to the unincorporated business tax. In addition, penalties were imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law.

3. Petitioner, James R. Slote, has been a soliciting agent for the Mutual Benefit Life Insurance Company ("Mutual Benefit"), since September, 1952. Petitioner was appointed by, and operated through, the Albert G. Schmerge Agency under a standard written agreement which provided in part:

(a) that petitioner was required to conform to all rules and regulations prescribed by the general agent or by Mutual Benefit.

(b) that petitioner was required "to devote his efforts regularly and systematically to the production of business".

(c) that petitioner "shall be free to exercise his own judgment as to the persons from whom he will solicit business and the time, place and manner of solicitation, provided, however, that such solicitation under this agreement shall be limited to the territory of the General Agent".

(d) that petitioner was required to furnish a fidelity bond at his own expense.

(e) that petitioner had no authority to bind Mutual Benefit or the general agent.

4. Petitioner was compensated on a commission basis with no withholding of payroll taxes except for amounts withheld under the Federal Insurance Contributions Act (F.I.C.A.). Petitioner was provided with group life insurance, an annuity, and accident and sickness insurance.

5. Petitioner was provided with office and secretarial facilities. He was required to periodically report to the office, located in New York State. In 1970, petitioner reported to a satellite office located in New Jersey, operated by Stuart K. Miller Associates, successor to the Albert G. Schmerge Agency. However, prior, during and subsequent to 1969, petitioner conducted his sales activities primarily within the State of New York.

6. Mutual Benefit permitted petitioner to sell noncompeting policies.

He sold policies for Paul Revere Life Insurance Company and also sold tax shelter contracts for a firm located in New York State.

7. Petitioner filed an unincorporated business tax return for the year 1968, on which he reported income derived from all his sales activities.

8. On January 1, 1969, petitioner organized James R. Slote Associates, Inc. ("the Corporation") under the laws of the State of New Jersey. All commissions from the sale of insurance and tax shelter contracts were assigned to the Corporation, which in turn paid petitioner a salary. However, all renewal income from sales consummated prior to January 1, 1969 were retained by petitioner and reported as wage income for 1969, and as net business income for 1970. This renewal income is the sole income at issue.

9. Petitioner did not challenge the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law.

CONCLUSIONS OF LAW

A. That renewal income received during the years 1969 and 1970 constituted income from an unincorporated business being liquidated by petitioner James R. Slote and is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law. (Matter of Cerf v. Lynch, 237 A.D. 283, aff'd. no op., 262 N.Y. 549).

B. That the petition of James R. Slote is denied and the Notice of Deficiency issued March 26, 1973 for the years 1969 and 1970 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 6 1980

STATE TAX COMMISSION

*James R. Kulla*  
PRESIDENT

*Thomas H. [unclear]*  
COMMISSIONER

*Francis R. Koenig*  
COMMISSIONER