STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Raymond Taylor :

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 - 1973. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Raymond Taylor, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raymond Taylor
130 Tara Dr.
Roslyn, NY 11576

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
3rd day of October, 1980.

Debbie Brink

STATE OF NEW YORK
STATE TAX COMMISSION

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Unincorporated Business Tax :
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for the Years 1971 - 1973. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Aaron S. Rogal 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. Aaron S. Rogal
Lennox, Lempel, Rogal & Nasser
100 Park Ave.
Staten Island, NY 10302

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
3rd day of October, 1980.

Debbie Bank

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

October 3, 1980

Raymond Taylor
130 Tara Dr.
Roslyn, NY 11576

Dear Mr. Taylor:

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) 690 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
Aaron S. Rogal
Lennox, Lempel, Rogal & Nasser
100 Park Ave.
Staten Island, NY 10302
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RAYMOND TAYLOR	:	DECISION
for Redetermination of a Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1971, 1972 and 1973.	:	

Petitioner, Raymond Taylor, 130 Tara Drive, Roslyn, New York 11576, 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, 1972 and 1973 (File No. 19381).

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 February 7, 1980 at 10:45 A.M. Petitioner appeared by Aaron S. Rogal, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner's activities as an insurance agent during the years 1971, 1972 and 1973 constituted the carrying on of an unincorporated business, the income of which is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Raymond Taylor, timely filed New York State combined income tax returns with his wife for the years 1971, 1972 and 1973 wherein he reported his net income derived from his activities as an insurance agent as "business income." He did not file unincorporated business tax returns for any of said years at issue.

2. On February 10, 1977 the Audit Division issued a Statement of Audit Changes to petitioner wherein it held "that the income from your activities as insurance agent is subject to the unincorporated business tax." Accordingly, a Notice of Deficiency was issued against petitioner on March 28, 1977 asserting unincorporated business tax of $6,418.89, plus interest of $1,769.79, for a total due of $8,188.68.

3. During each year at issue herein petitioner derived gross income related to insurance sales from various sources as follows:

	1971	1972	1973
Equitable Life Insurance Company of Iowa	$24,138.00	$25,530.00	$20,816.00
Shepherd-Taylor Associates, Inc.	15,942.00	20,746.00	20,452.00
Other	17,879.00	22,803.00	19,082.00
TOTAL	$57,959.00	$69,079.00	$60,350.00

Income described catagorically as "other" was derived from policies placed with at least seven other insurance companies during each year at issue.

4. Petitioner contended that as a full-time career agent of Equitable Life Insurance Company of Iowa (hereinafter Equitable) his compensation was derived from services rendered as an employee under a bona fide employer - employee relationship, and as such, said income is exempt from the imposition of unincorporated business tax. Further, he contended that as an officer of Shepherd-Taylor Associates Inc. (hereinafter Shepherd-Taylor) his services were predominantly of an executive nature. As such, he believes that his compensation from Shepherd-Taylor should properly be allocated between that derived from executive function and that derived from sales activities, and that the allocated portion derived from performing executive functions is exempt from the imposition of unincorporated business tax. No actual breakdown was submitted for computing such allocation.

5. With respect to his "other" income derived from various other insurance companies, petitioner conceded that this income is subject to the unincorporated business tax.

6. Petitioner submitted a statement dated August 24, 1978 from Equitable, signed by Donald L. Shepherd, CLU as the General Agent, wherein it states that:

a. Secretarial services, telephone, housing, and stationery were furnished to petitioner by Mr. Shepherd, on behalf of Equitable

b. Petitioner was covered under a qualified pension plan and a group life medical plan

c. Equitable paid social security taxes for petitioner and considered him an employee, and

d. Equitable was aware that petitioner placed accident and health, group insurance and some other benefit plans that the company did not sell, outside the Equitable organization.

7. Petitioner was paid by Equitable on a commission basis for the sale of life and disability insurance only. His compensation was reported each year on a Federal form 1099. No taxes were withheld from such compensation. Federal Schedules C were used to report petitioner's net income from all insurance sales.

8. Equitable required petitioner to attend weekly sales meetings.

9. Equitable did not reimburse petitioner for business expenses incurred on its behalf.

10. Petitioner was not prohibited by written agreement from selling insurance for other companies without the consent of Equitable.

11. Donald L. Shepherd, General Agent of Equitable, supplied petitioner with office space at 270 Madison Avenue, New York City.

12. Petitioner contended that he was expected to work for Equitable at least five days per week, from 9:00 A.M. to 5:00 P.M.

13. Petitioner contended that he was an employee of Shepherd-Taylor Associates Inc., which also maintained an office at 270 Madison Avenue, New York City. This office comprised a small area, the space of which was sub-leased from Equitable's general agency.

14. Both petitioner and Donald L. Shepherd, general agent for Equitable, were officers and stockholders of Shepherd-Taylor. Petitioner, who contended that he was in charge of operations at Shepherd-Taylor, was listed on a payroll schedule submitted by Shepherd-Taylor as the Chief Administrative Officer while Donald L. Shepherd was listed as Assistant Administrative Officer. In a letter attached to said schedule, Donald L. Shepherd signed as "Secretary/Treasurer". Further, on the New York State corporation franchise tax reports filed by Shepherd-Taylor for the years at issue, petitioner was listed as Secretary, while Donald L. Shepherd was listed as President.

15. Petitioner contended that he worked for Shepherd-Taylor in the evenings and was compensated on a salary plus commission basis. His earnings were reported on a Federal form 1099.

16. Shepherd-Taylor sold property and casualty insurance policies.

17. Shepherd-Taylor did not reimburse petitioner for business expenses incurred on its behalf.

CONCLUSIONS OF LAW

A. That Equitable Life Insurance Company of Iowa, through the general agency of Donald L. Shepherd, did not exercise a sufficient degree of direction and control over petitioner's activities, which would be necessary for the existance of a bonafide employer - employee relationship. Accordingly, petitioner was not an employee of Equitable for the years at issue within the meaning and intent of section 703(b) of the Tax Law.

B. That since a clear division of time and effort expended by petitioner between Equitable, Shepherd-Taylor and the "other" insurance companies with which he dealt has not been shown, petitioner's insurance sales related activities engaged in for all his principals were so integrated and interrelated so as to constitute the carrying on of one business within the meaning and intent of section 703 of the Tax Law of which the income derived therefrom is subject to the imposition of unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

C. That the petition of Raymond Taylor is denied and the Notice of Deficiency dated March 28, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 0 3 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER