

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Harry Zion (Est. of) :

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 1968 - 1971. :

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Harry Zion (Est. of), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

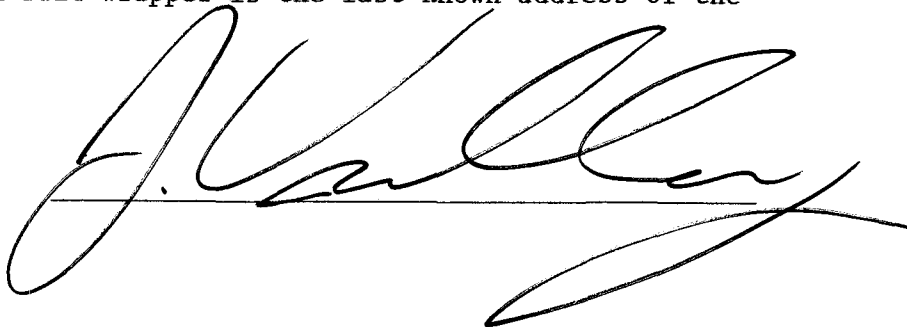
Harry Zion (Est. of)  
344 E. 84th St.  
New York, NY 10028

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  
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Harry Zion (Est. of) :  
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 1968 - 1971. :

AFFIDAVIT OF MAILING

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Bertrand Leopold the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

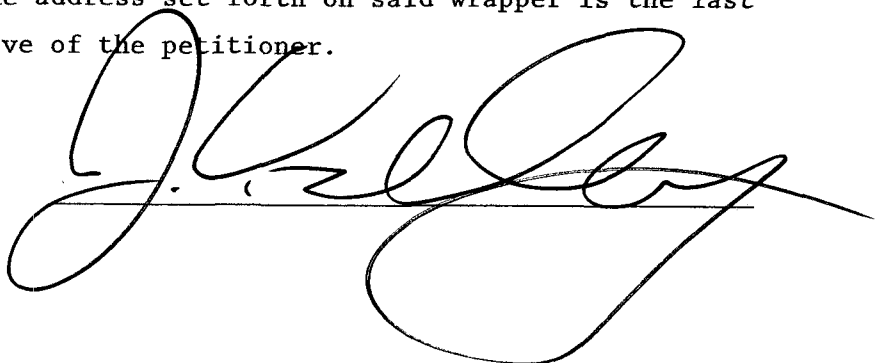
Mr. Bertrand Leopold  
18 Joseph St.  
New Hyde Pk., NY 11040

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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

Harry Zion (Est. of)  
344 E. 84th St.  
New York, NY 10028

To the Executors:

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  
Bertrand Leopold  
18 Joseph St.  
New Hyde Pk., NY 11040  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
ESTATE OF HARRY ZION  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business  
Taxes under Article 23 of the Tax Law for  
the Years 1968 through 1971.

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DECISION

Petitioner, the Estate of Harry Zion, c/o Jean Zion, Executrix, 344 East 84th Street, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968 through 1971 (File No. 11518).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1977 at 9:15 A.M. Petitioner appeared by Bertrand Leopold, Tax Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether the activities of the decedent, Harry Zion, during the years 1968 through 1971 constituted the practice of a profession within the meaning of section 703(c) of the Tax Law and thus not deemed an unincorporated business.

II. Whether decedent was an employee of General Investment Corporation within the meaning of section 703(b) of the Tax Law.

III. Whether decedent was engaged in an unincorporated business; if so, what portion of the income attributable to said business should be allocated to New York State?

FINDINGS OF FACT

1. Harry Zion timely filed New York State combined income tax returns

with his wife for each of the years 1968 through 1971. He did not file unincorporated business income tax returns said years. Mr. Zion died February 23, 1974.

2. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency against the Estate of Harry Zion for unincorporated business tax for the years 1968, 1969, 1970 and 1971, as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1968	\$ 557.04	\$226.60	\$ 783.64
1969	946.39	328.21	1,274.60
1970	440.31	126.28	566.59
1971	<u>130.36</u>	<u>29.57</u>	<u>159.93</u>
TOTAL	<u>\$2,074.10</u>	<u>\$710.66</u>	<u>\$2,784.76</u>

3. On February 17, 1976, a petition for redetermination of deficiency or for refund of unincorporated business tax was filed by the Estate of Harry Zion. Letters testamentary had been issued to Jean Zion by the Surrogate's Court of the County of New York on April 3, 1974.

4. Harry Zion was a manufacturers' representative for General Instrument Corp. of Newark, N. J., Tele-Sciences Corp. of Moorestown, New Jersey and Jovil Mfg. Co. of Danbury, Conn. He sold electrical and electronic products and components to customers of his principals. The principals furnished Mr. Zion with lists of prospective buyers.

5. Petitioner, as a representative of General Instrument Corporation, spent approximately ten percent of his time in New York State visiting clients and discussing with them the design of any system they needed so they would buy the product.

6. Harry Zion was furnished an office, secretarial help and telephone facilities by General Instrument Corp. at their Newark, New Jersey offices. He held consultations with customers at these New Jersey offices, or at the

plants of the customers in New Jersey, Connecticut, Massachusetts and New York. He was paid a straight commission based on his gross sales.

7. Harry Zion devoted the bulk of his time to the sales and service of customers of General Instrument Corp. but there was no agreement orally or in writing requiring any particular division of Mr. Zion's time among his several principals. How and for whom he spent his time, was entirely in his own discretion. Harry Zion commuted from his New York City home to the Newark office of General Instrument Corp. several times a week, where he was provided with free office space, telephone and secretarial services. However, he spent most of his time "on the road".

8. Harry Zion attached Schedule "C" (Profit or Loss From Business or Profession) to each of the Federal income tax returns he filed with his wife for the years 1968 through 1971. He stated thereon that his business was "Manufacturers' Representative". He took business deductions including telephone, entertainment, travel and gifts for secretarial services. Harry Zion received no reimbursement from his principals for expenses incurred as their representative.

9. Harry Zion was not subjected by any of his principals to withholding for social security, State or Federal income taxes, nor was he covered for disability or unemployment compensation. He paid social security taxes as a self-employed person and maintained a Keogh plan for retirement.

10. Harry Zion was a graduate of Brooklyn Polytechnic Institute with a degree in electrical engineering. He had taught science, electronics and engineering, and also gave technical and engineering advice to those to whom he sold electric and electronic components in carrying on what he called "sales engineering". Harry Zion was a senior member of the Institute of Electrical and Electronics Engineers, Inc.

11. Harry Zion had an office in the basement of his New York City home in which he kept some invoices and sales records, and from which he sent some correspondence, and made some telephone calls in connection with his work as a manufacturers' representative. He had no letterhead of his own but used the letterhead of his respective principals in writing to their customers or prospects. All billing and collections were handled by the several manufacturers represented by Harry Zion.

12. Harry Zion was advised by his tax accountant that he was exempt from unincorporated business taxes and was not required to file returns under Article 23 of the Tax Law.

#### CONCLUSIONS OF LAW

A. That the activities of the decedent, Harry Zion, during the years at issue, did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

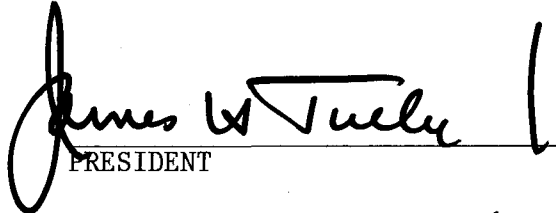
B. That the decedent, Harry Zion, was not an employee of General Instrument Corp. Neither that principal nor any other for which Harry Zion sold goods and services exercised a sufficient degree of control and direction requisite to warrant his being considered an employee within the purview of the Tax Law. Matter of Britton v. State Tax Commission, 22 A.D.2d 987, 254 N.Y.S.2d 557, Aff'd. 19 N.Y.2d 613, 278 N.Y.S.2d 400, 224 N.E.2d 893.


C. That the income producing activities of Harry Zion as a manufacturers' representative constituted his carrying on of an unincorporated business and that said business was conducted in New York State to the extent of approximately ten percent; however, because New York gross income was less than the statutory exemption provided by section 709(1) of the Tax Law, no unincorporated business tax is due.

D. That the petition of the Estate of Harry Zion is granted and the Notice of Deficiency dated January 26, 1976 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

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COMMISSIONER