

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John G. Bacon :  
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 1973 - 1976. :

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon John G. Bacon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John G. Bacon  
15 Summit Dr.  
Manhasset, NY 11030

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  
25th day of September, 1981.

*Annice A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John G. Bacon :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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Business Tax under Article 23 of the Tax Law for :  
the Years 1973 - 1976. :

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Sanford Goldstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sanford Goldstein  
Sanford Goldstein & Co.  
60 E. 42nd St.  
New York, NY 10017

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  
25th day of September, 1981.

*Annice A. Hagelund*

*J. Vredenburg*

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

September 25, 1981

John G. Bacon  
15 Summit Dr.  
Manhasset, NY 11030

Dear Mr. Bacon:

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  
Sanford Goldstein  
Sanford Goldstein & Co.  
60 E. 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOHN G. BACON	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1973, 1974, 1975 and	:	
1976.	:	

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Petitioner, John G. Bacon, 15 Summit Drive, Manhasset, New York 11030, 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 1973, 1974, 1975 and 1976 (File No. 25004).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1980 at 1:15 P.M. Petitioner appeared by Sanford Goldstein & Co. (Sanford Goldstein, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner's, John G. Bacon, activities as an insurance administrator constitutes the carrying on of an unincorporated business, the income from which is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, John G. Bacon, and Gertrude Bacon, his wife, filed combined New York State income tax resident returns for the years 1973, 1974, 1975 and 1976. Petitioner, John G. Bacon, did not file unincorporated business tax returns for said years.

2. On March 24, 1978, the Audit Division issued a Notice of Deficiency against petitioner, together with an explanatory Statement of Audit Changes for subject years asserting unincorporated business tax of \$5,371.16, penalties under section 685, subdivisions (a)(1) and (a)(2) of the Tax Law and interest of \$3,281.41, for a total of \$8,652.57. The issuance of the Notice of Deficiency and Statement of Audit Changes was based on the Audit Division's holding that petitioner's activities as an insurance administrator is subject to unincorporated business tax.

3. On January 27, 1964, petitioner was appointed trustee of the Hotel Association Group Trust (hereinafter "Trust"). Under date of January 24, 1965, the Board of Trustees appointed petitioner administrator of the Trust.

4. The Trust is a trade association engaged in purchasing multi-type group insurance which it makes available to its members who are hotel and motel owners located throughout the United States. The members, in addition to paying the required insurance premium, are also required to pay a service charge to the Trust. The sums realized by the Trust from its service charge is the source from which compensation was paid petitioner.

5. The services rendered by petitioner was to assist members in determining their eligibility for the various insurance programs offered by the Trust. His findings would then be submitted to the Board of Trustees for their determination. Petitioner did not sell insurance to Trust members nor act as an agent of any insurance company.

6. The Trust did not provide petitioner with an office nor with any other facilities in performance of his duties.

7. Petitioner contends that the duties assigned him by the trustees were performed at his home or at the meetings of the Board of Trustees which took

place principally outside of New York State. Further, that for period at issue, he was a full time employee of Schiff Terhune, Inc.

8. The Trust did not withhold income or social security tax from petitioner.

9. For subject years, petitioner reported earnings as an insurance administrator on Federal form 1040, Schedule C.

10. At the hearing, petitioner did not contest penalties imposed under section 685, subdivisions (a)(1) and (a)(2) of the Tax Law.

CONCLUSIONS OF LAW

A. That the administrative duties performed by petitioner John Bacon for the Hotel Association Group Trust for subject years did not constitute an unincorporated business in accordance with the meaning and intent of section 703(b) of the Tax Law. That petitioner did not, in his capacity as an administrator perform or offer to perform similar services to the general public on an independent basis. The carrying on of a trade or business involves holding one's self out to others as engaged in the selling of goods or services (Deputy v. DuPont, 308 U.S. 488, 60 S. Ct. 363, 84 L.Ed. 416; McDowell v. Ribicoff, 2d Cir., 292 F.2d 174). Petitioner did not attempt to solicit any further business or hold himself out as being available as an administrator to the general public.

B. That the petition of John G. Bacon is granted and the Notice of Deficiency dated March 24, 1978 is cancelled.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION

James B. Tuller  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Tuller  
COMMISSIONER