

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Gilbert Rudow

:

:

: 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 Year 1975.

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 November, 1981, he served the within notice of Decision by certified mail upon Gilbert Rudow, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gilbert Rudow
409 Elm 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
6th day of November, 1981.

Constance A. Hagedorn

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
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Business Tax under Article 23 of the Tax Law for :
the Year 1975

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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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Robert G. Sher the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert G. Sher
Schwartz & Sher
371 Merrick Rd., P.O. Box 502
Rockville Centre, NY 11571

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 November, 1981.

Connie A. Haglund

J. Vredenburg

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

November 6, 1981

Gilbert Rudow
409 Elm Dr.
Roslyn, NY 11576

Dear Mr. Rudow:

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 G. Sher
Schwartz & Sher
371 Merrick Rd., P.O. Box 502
Rockville Centre, NY 11571
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GILBERT RUDOW
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1975.

DECISION

Petitioner, Gilbert Rudow, 409 Elm 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 year 1975 (File No. 21683).

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 April 28, 1981 at 1:15 P.M. Petitioner Gilbert Rudow appeared by Robert G. Sher, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (S. Freund, Esq., of counsel).

ISSUE

Whether the income derived from "insurance sales" is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Gilbert Rudow and Roslyn Rudow, his wife, timely filed a joint New York State Income Tax Resident Return for the year 1975, on which net business income of \$30,881.00 was reported from "insurance sales". Petitioner Gilbert Rudow did not file an unincorporated business tax return for the year 1975.

2. On March 27, 1978 the Audit Division issued a Notice of Deficiency for \$1,148.46, plus interest of \$190.16 and penalties of \$327.31, along with a Statement of Audit Changes, which indicated that;

- (a) the income derived from petitioners activities as a general agent during the year 1975 was subject to the unincorporated business tax.
- (b) penalties under sections 685(a)(1) and 685(a)(2) of the Tax Law were imposed. Petitioner did not challenge these penalties and therefore, such penalties are not at issue.

3. Petitioner Gilbert Rudow contended that he was a general agent for the Massachusettes Mutual Life Insurance Company, operating under the name and style of the New York-Rudow Agency, from 1972 to January, 1975. Petitioner submitted a photo-copy of his resignation letter, which took "effect as of the close of business on April 30, 1975."

4. Petitioner Gilbert Rudow contended that as of February, 1975 he was an employee of the Steinberg-Zittell Agency, selling life insurance on a commission basis. Petitioner offered no documentary evidence, nor did he render sworn testimony as to the nature, character and degree of direction and control imposed by the Steinberg-Zittell Agency, or the New York-Rudow Agency of the Massachusettes Mutual Life Insurance Company.

5. Petitioner Gilbert Rudow submitted a photo-copy of Federal form schedule C, "Profit or (Loss) From Business or Profession", for 1975 which indicated the following:

GROSS RECEIPTS		\$103,362.00
Less:		
Commissions Paid to Agents	27,436.00	
Salaries and Wages	2,920.00	
Legal and Professional fees	1,500.00	
Interest	1,825.00	
Other Business Expenses	38,800.00	
Total		<u>\$ 72,481.00</u>
Net Business Income Reported		<u>\$ 30,881.00</u>

Petitioner contended that the aforementioned schedule C included income and expenses from his activities as a general agent during January, 1975 and as an employee after February 1, 1975. No evidence was submitted establishing a breakdown of income and expenses in support of his contentions.

6. Petitioner contended that prior to the year 1975, he filed unincorporated business tax returns and that he did not file an unincorporated business tax return for the month of January, 1975 since he suffered a loss from his business activities.

CONCLUSIONS OF LAW

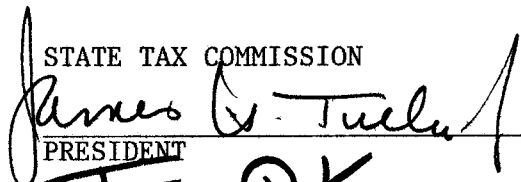
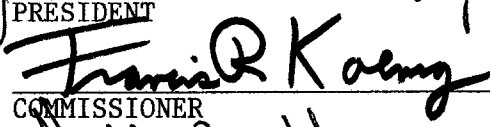
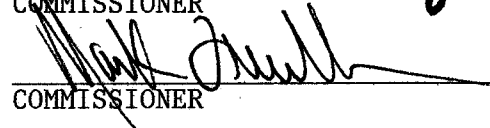
A. That petitioner Gilbert Rudow has failed to sustain the burden of proof as required by sections 722 and 689(e) of the Tax Law in establishing the degree of direction and control imposed, if any, by the Steinberg-Zittell Agency, or by the Massachusettes Mutual Life Insurance Company during the year 1975, or that he was an employee as defined by 20 NYCRR 203.10(b).

B. That petitioner's activities during the year 1975 constituted the carrying on of an unincorporated business and the income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Gilbert Rudow is denied and the Notice of Deficiency issued March 27, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER