

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John W. Rigley :

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 1972 - 1974. :

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 March, 1981, he served the within notice of Decision by certified mail upon John W. Rigley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John W. Rigley
2222 Ferrier Rd.
Eden, NY 14057

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 March, 1981.

Cornie A. Haglund

[Signature]

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

March 6, 1981

John W. Rigley
2222 Ferrier Rd.
Eden, NY 14057

Dear Mr. Rigley:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN W. RIGLEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1972	:	
through 1974.	:	

Petitioner, John W. Rigley, 2222 Ferrier Road, Eden, New York 14057, 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 1972 through 1974 (File No. 18294).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on July 10, 1980 at 1:15 P.M. Petitioner, John W. Rigley, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

- I. Whether the petitioner's activities as a insurance administrator for trusts constitutes the carrying on of an unincorporated business or that of an employee not subject to unincorporated business tax.
- II. Whether the Audit Division properly asserted penalties against petitioner, pursuant to section 685(a)(1), 685(a)(2) and 685(c) of the Tax Law.
- III. Whether petitioner was entitled to an unincorporated business deduction for the reasonable value of service rendered by his spouse.

FINDINGS OF FACT

1. Petitioner, John W. Rigley, filed with his wife joint New York State income tax resident returns for the years 1972 through 1974, on which he

reported net business income from his activities in real estate and insurance business. He did not file unincorporated business tax returns for said years on the advice of his accountant.

2. On March 28, 1977, the Audit Division issued a Notice of Deficiency against petitioner for the years 1972 through 1974. The Notice imposed unincorporated business tax of \$1,775.30, plus penalties [pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law] of \$916.30 and interest of \$400.86 for a total due of \$3,092.46. The explanation for the Notice of Deficiency is as follows:

"The income from your activities as a Real Estate Broker and Insurance Broker is subject to Unincorporated Business Taxes for 1972, 1973 and 1974.

An additional charge is imposed under Section 685(c) of the State Tax Law for underestimation of tax for 1972, 1973 and 1974.

An additional penalty is imposed under Section 685(a)(1) and (a)(2) for failure to file and failure to pay Unincorporated Business Taxes for 1972, 1973 and 1974.

3. During the years at issue, the petitioner was an insurance administrator for three different trusts for which he received fees for administering group hospitalization and surgical insurance plans and group accidental death and dismemberment insurance plans. Petitioner would process the claims of the members, of the different associations having the trust, with the insurance companies. For processing the claims the petitioner received a fee based on the number of members within the various associations during any given month. The amount of time spent by the petitioner on this activity was based on the work load. The petitioner was responsible to the various boards of trustees who acted in a fiduciary capacity for its members.

4. The boards of trustees could relieve the petitioner of his responsibilities for their trust. The petitioner was required to keep records and monies of the various trust separate. However, petitioner was free to exercise his judgment as to the time and manner of performing the services authorized by the various boards of trustees, subject to such rules and regulations as may be adopted from time to time by boards of trustees. Petitioner did not present evidence as to any restriction to the number of trusts that he could be insurance administrator for.

5. The petitioner was the insurance administrator for three associations, and was paid a fee by all three associations. He contended that since these associations had control over the work he did, the way he did it, the way he handled their account and that he could be replaced at their discretion; and therefore he was not subject to the unincorporated business tax. He then argued that if you subtracted the \$7,107.00, \$8,608.00 and \$9,213.00 for the years 1972 through 1974 respectively, for the fees he received from these three associations, the remainder would be below \$10,000.00.

6. Petitioner contended that if his income from his activities is found subject to unincorporated business tax, that an additional \$5,000.00 a year should be allowed for the service rendered by his wife. No evidence was submitted that the petitioner's wife received a wage statement or information return. There was no evidence that the petitioner's wife was paid a salary, had payroll taxes withheld, or was treated in the same manner as other employees.

CONCLUSIONS OF LAW

A. That the activities of petitioner, John W. Rigley, for the three different trust during the years 1972, 1973 and 1974 were performed as an independent agent rather than that of an employee; therefore, petitioner was

engaged in the carrying on of an unincorporated business during the years at issue in accordance with the meaning and intent of section 703 of the Tax Law.

B. That petitioner's failure to file unincorporated business tax returns for the years at issue was due to reasonable cause and not due to willful neglect. Therefore, the penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.

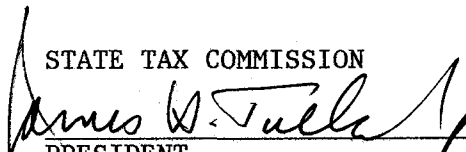


C. That petitioner has met the requirements under section 685(d) of the Tax Law. Therefore, the penalty imposed pursuant to section 685(c) of the Tax Law is cancelled.

D. That Article 23 of the Tax Law does not provide for an unincorporated business tax deduction for the reasonable value of services rendered by a spouse or any other individual unless wages are in fact, paid. That petitioner failed to sustain the necessary burden of proof established by section 689(e) of the Tax Law, to show that he paid wages to his spouse therefore a business deduction for the value of services rendered by his wife is not allowed.

E. That the petition of John W. Rigley is granted to the extent indicated in Conclusion of Law "B"; and the Audit Division is directed to modify the Notice of Deficiency issued on March 28, 1977 to be consistent with the decision rendered herein. That, except as so granted, the petition is in all other respects denied and the Notice of Deficiency, as modified, is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAR 06 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER