

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
William Schur

:

:

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

William Schur  
23 Pinetree Rd.  
Westbury, NY 11590

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 July, 1981.

*Cherie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
William Schur :

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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 July, 1981, he served the within notice of Decision by certified mail upon Harvey M. Lifset the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey M. Lifset  
112 State St.  
Albany, NY 12207

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 July, 1981.

*Cornie A. Hagelund*

*J. Vredenburg*

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

July 3, 1981

William Schur  
23 Pinetree Rd.  
Westbury, NY 11590

Dear Mr. Schur:

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  
Harvey M. Lifset  
112 State St.  
Albany, NY 12207  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
WILLIAM SCHUR  
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.

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DECISION  
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Petitioner, William Schur, 23 Pinetree Road, Westbury, New York 11590, 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. 20324).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building No. 9, State Campus, Albany, New York, on April 23, 1979 at 1:15 P.M. Petitioner appeared by Harvey M. Lifset, Esq. The Audit Division appeared by Peter Crotty, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether petitioner's activities as an insurance salesman during the years 1971, 1972 and 1973 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, William Schur, and his wife, Rona Schur, filed New York State Combined Income Tax resident returns for 1971, 1972 and 1973 in which petitioner William Schur reported business income in the respective amounts of \$22,681.60, \$29,150.79 and \$22,014.07. He did not file unincorporated business tax returns for said years.

2. On June 24, 1977, the Audit Division issued a Statement of Audit Changes against petitioner imposing unincorporated business tax of \$722.99 for the year 1971, \$1,053.29 for the year 1972, and \$693.62 for the year 1973, plus interest of \$767.19, for a total due of \$3,237.09. The statement was issued on the grounds that petitioner's income from his activities as an insurance agent was subject to unincorporated business tax. Accordingly, on September 26, 1977, a Notice of Deficiency was issued totalling \$3,237.09.

3. In the years 1971, 1972 and 1973, petitioner was associated with Connecticut Mutual Life Insurance Co., under a written agreement. The agreement stated in part that "The agent shall be free to exercise his own judgment as to the time, place and means of soliciting and procuring applications for insurance and annuities under the authorization contained in this Agreement." Petitioner was a licensed insurance broker during the periods in issue. He sold insurance for companies other than Connecticut Mutual Life Insurance Co. Connecticut Mutual Life Insurance Co. handled life insurance only, and petitioner had to place all of his casualty insurance with other companies. He would also place clients who were turned down by Connecticut Mutual Life Insurance Co. with other companies. Connecticut Mutual Life Insurance Co. did not withhold Federal or State income taxes from the petitioner's income, but did withhold social security taxes. Petitioner was paid on a commission basis by his principals.

4. Petitioner stated that "From time to time they (Connecticut Mutual) would obtain leads from advertising sources and various sources. And there weren't too many but occassionally a lead would come my way. They did their best to supply us with leads, but it's in the nature of the life insurance

business that you, to the extent you can, dig them up yourself. It's to the extent you made your livelihood."

5. Connecticut Mutual Life Insurance Co. supplied office space, stenographic assistance and telephone facilities to the petitioner through a general agent. Petitioner took no business deductions for the office in his home on his Federal income tax return for any of the years in issue.

6. Petitioner was covered by a pension plan and a health and disability insurance program of Connecticut Mutual Life Insurance Co.

7. Petitioner received form "1099 Misc. used to report insurance commissions". He filed a federal schedule "C", Profit (or Loss) from Business or Profession (Sole Proprietorship). He listed the following deductions for his business expenses in 1971:

legal and professional fee	\$ 495.00
commissions	167.44
stationery, printing and postage	1,437.52
secretarial services	4,144.87
dues and subscriptions	338.94
telephone	446.16
entertainment, lunches, gifts, etc.	8,210.48
auto expense, fares and parking	2,439.94
meetings and conventions	665.41
medical exams	865.00
sundry	1,644.85

A portion of the secretarial services was paid for from first year commissions. Some of his postage and telephone expenses were subsidized by Connecticut Mutual Life Insurance Co. His 1972 and 1973 deductions were similar in nature and only the dollar amounts varied.

8. A breakdown of petitioner's earnings for the years in issue from Connecticut Mutual Life Insurance Co. and other companies is as follows:

1971 BREAKDOWN OF EARNINGS

Connecticut Mutual \$24,131.53

Other Companies:

Phoenix Mutual	\$1,715.60	
Camps Agency	1,394.00	
Continental American	1,381.68	
M. Hutser	1,290.61	
Dascit & Winston	1,006.77	
Press & Fishman	631.08	
J. Greenbaum	542.42	
Manhattan Life	491.91	
Union Mutual	475.00	
Federal Life	474.87	
Rosan Agency	377.72	
Centurian	317.71	
Sundry Others	2,274.22	
Mutual Funds	<u>7,061.14</u>	<u>19,434.73</u>
1971 Total		<u>\$43,566.26</u>

1972 BREAKDOWN OF EARNINGS

Connecticut Mutual \$35,038.72

Other Companies:

Paul Revere	\$1,931.57	
Phoenix Mutual	1,786.94	
Federal Life	1,764.73	
Underwriters National	1,625.38	
Roebuck Funds	1,729.89	
Dascit/White/Winston	1,341.52	
Vogel Agency	922.79	
Union Mutual	833.38	
Continental American	928.95	
Manhattan Life	747.31	
J. Greenbaum	751.47	
Camps Agency	682.08	
M. Huber	608.75	
Security-Conn. Life	394.06	
Rosan Agency	352.25	
Algren Assoc.	293.48	
Press Fishman	237.47	
Standard Security	220.26	
Sundry Others	<u>508.43</u>	<u>17,660.71</u>
1972 Total		<u>\$52,699.43</u>

<u>1973 BREAKDOWN OF EARNINGS</u>		
Connecticut Mutual		\$27,085.89
Other Companies:		
Krasne	\$ 529.98	
Phoenix Mutual	2,801.90	
Vogel Agency	2,106.47	
Paul Revere	1,331.92	
Mintler & Mintler	1,300.00	
Great Ted	1,200.00	
Federal Life	928.97	
Continental American	847.25	
Underwriters National	812.70	
J. Greenbaum	796.94	
Dascit, White & Winston	789.61	
Union Mutual	451.76	
Manhattan Life	451.15	
Press Fishman	400.77	
Rosan Agency	389.71	
Camps Agency	298.78	
Sundry Others	<u>3,000.98</u>	<u>18,438.89</u>
1973 Total		<u>\$45,524.78</u>

CONCLUSIONS OF LAW

A. That Connecticut Mutual Life Insurance Co. did not exercise sufficient direction and control over petitioner William Schur's activities so as to create an employee-employer relationship within the meaning and intent of section 703(b) of the Tax Law.

B. That petitioner was not a "full time life insurance soliciting agent" for Connecticut Mutual Life Insurance Co. since he had substantial and ongoing business dealings with other companies and agencies (see Matter of Cohen v. Norman Gallman, 48 AD 2d 754). Therefore, the income received by petitioner William Schur for rendering services to Connecticut Mutual Life Insurance Co. and for services rendered to other companies which totaled \$19,434.73 in 1971, \$17,660.71 in 1972 and \$18,438.89 in 1973, constituted income derived from carrying on an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

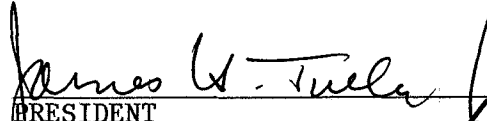


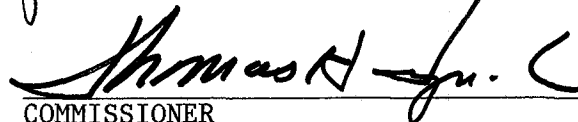
C. That the petition of William Schur is denied and the Notice of Deficiency issued on September 26, 1977 is sustained, together with such interest as may be lawfully owing.

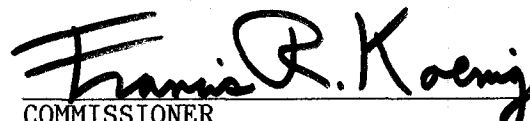
DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER