

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Richard T. Weldon :

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 1965-1971. :

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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Richard T. Weldon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard T. Weldon
321 Ten Eyck St.
Watertown, NY 13601

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
9th day of January, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Richard T. Weldon :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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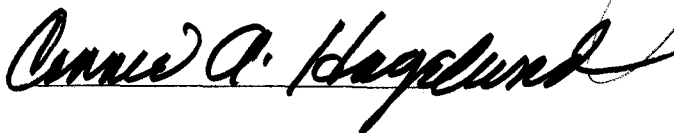
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Decision by certified mail upon Ronald G. King the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

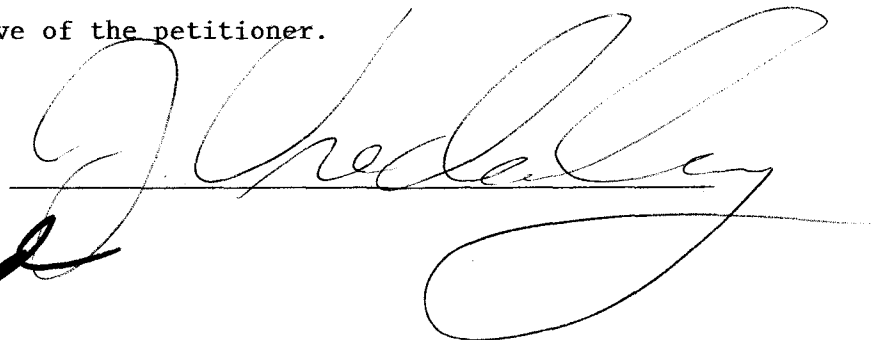
Mr. Ronald G. King
P.O. Box 835
Watertown, NY 13601

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
9th day of January, 1981.


Anne A. Haglund


Jay Vredenburg

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

January 9, 1981

Richard T. Weldon
321 Ten Eyck St.
Watertown, NY 13601

Dear Mr. Weldon:

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
Ronald G. King
P.O. Box 835
Watertown, NY 13601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RICHARD T. WELDON : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1965 through 1971. :

Petitioner, Richard T. Weldon, 321 Ten Eyck Street, Watertown, New York 13601, 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 1965 through 1971 (File No. 10738).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on September 20, 1979 at 10:45 A.M. Petitioner appeared by Ronald King, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kathy Sanderson, Esq., of counsel).

ISSUE

Whether income derived by petitioner from insurance sales, as an agent for Guardian Life Insurance Company during the years 1965 through 1971, was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Richard T. Weldon, filed New York State income tax resident returns for the years 1965 through 1971. Unincorporated business tax returns were not filed for said years.

2. On January 29, 1973, the Audit Division issued a Statement of Audit Changes and a Notice of Deficiency against petitioner for unincorporated business tax of \$9,751.74 plus penalties and interest for the years 1965 through 1971. Petitioner timely filed a petition for redetermination.

3. It was the Audit Division's position that the income derived from petitioner's activities as an insurance agent was subject to unincorporated business tax under section 701 of the Tax Law.

4. During the years at issue, petitioner represented Guardian Life Insurance Company of America (hereinafter Guardian) as district agent in the Watertown area. Under terms of an agreement between petitioner and Guardian, petitioner's territory was defined unless written consent of Guardian was received.

Provisions of the agreement required Guardian's approval of the appointment of agents, brokers and clerical help, although they were designated as employees of the district agent. Petitioner was bound by rules and regulations of Guardian contained in an agent's manual and instructions for agency officers. All books and records kept by the petitioner in connection with the business of Guardian were the property of Guardian and were to be returned on demand.

Reimbursement was provided for sums expended with the previous written consent of Guardian for office rent, clerical hire, telephone, postage and other authorized office expenses in furtherance of Guardian business. Reimbursement was based on premiums and new life insurance business. Premium quotas were required to be met in order to maintain the agreement.

Section 6(E) of the agreement defined the district agent as an independent contractor, stating that nothing contained in the agreement shall be construed to create the relation of employee and employer between the district agent and Guardian.

5. The lease of office space, although in the name of the petitioner, was subject to the approval of the Company. The name of Guardian Life appeared on all stationery, telephone listings and the office door. Petitioner could place insurance with another company if Guardian Life rejected the business; however, he contended that he sold insurance for Guardian Life only.

6. Petitioner reported to a director of agents at least weekly by phone. Sales meetings were held five or six times a year covering techniques and new developments. Business trips were reimbursed for required meetings.

7. Petitioner filed income and expense reports on a monthly basis with Guardian, and his books and records were subject to audit at least once a year. Annual inventories of furniture and equipment were required to be reported to and were the property of Guardian Life.

8. Guardian withheld no taxes from petitioner's commissions and he was not covered by workman's compensation. He was covered by major medical, hospitalization, group life and a pension plan through the Company.

9. Petitioner's only employee was a secretary whose salary, along with office rent and telephone expenses, was reimbursed under the provisions of the agreement.

CONCLUSIONS OF LAW

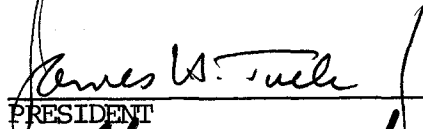
A. That the controls exercised by Guardian Life Insurance Company of America over petitioner Richard T. Weldon's business activities were sufficient to render him an employee of the Company, and that the income derived from such activities is exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

B. That the petition of Richard T. Weldon is granted and the Notice of Deficiency dated January 29, 1973 is cancelled.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER