

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert J. Decker :
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 - 1974. :
_____:

AFFIDAVIT OF MAILING

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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Robert J. Decker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert J. Decker
80 Exchange St.
Binghamton, NY 13901

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
23rd day of April, 1982.

Cornelia A. Skerlund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert J. Decker :

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 - 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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon John E. Gehr the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John E. Gehr
28 Hotchkiss Ave.
Binghamton, NY 13901

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
23rd day of April, 1982.

Donna A. Haglund

Jay Vredenburg

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

April 23, 1982

Robert J. Decker
80 Exchange St.
Binghamton, NY 13901

Dear Mr. Decker:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
John E. Gehr
28 Hotchkiss Ave.
Binghamton, NY 13901
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT J. DECKER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1973	:	
and 1974.	:	

Petitioner Robert J. Decker, 80 Exchange Street, Binghamton, New York 13901 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 and 1974 (File No. 17931).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on December 6, 1979 at 9:15 A.M. Petitioner appeared by John E. Gehr, CPA. The Audit Division appeared by Robert J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether the petitioner was engaged in an unincorporated business with respect to the sale of life insurance for Security Mutual Life Insurance Company of New York for the period July 1, 1973 through December 31, 1974.

FINDINGS OF FACT

1. Petitioner, Robert J. Decker, timely filed New York State personal income tax returns with his wife, Edna A. Decker, for 1973 and 1974. He filed a part year unincorporated business tax return for 1973 but, did not file a unincorporated business tax return for 1974. The part year unincorporated business tax return was for the petitioner's unincorporated insurance brokers

agency business from January through June 1973. Petitioner incorporated his insurance brokers agency on July 1, 1973 and the income received by petitioner from said agency after that date is not at issue.

2. On December 20, 1976, the Audit Division issued a Notice of Deficiency against the petitioner for the years 1973 and 1974 for unincorporated business tax of \$744.63, plus interest of \$141.54 for a total of \$886.11. The notice was issued on the grounds that petitioner's commission income received from his sales activities as a life insurance salesman with Security Mutual Life Insurance Company of New York was subject to unincorporated business tax.

3. During the years in issue petitioner, Robert J. Decker, was an insurance salesman associated with the Security Mutual Life Insurance Company of New York. In addition, petitioner was the owner of an insurance agency known as Robert J. Decker & Associates, Ltd. of Binghamton, New York who was the general agent for Security Mutual Life Insurance Company. (hereinafter "Security").

4. Petitioner signed a General Agents Contract (effective July 1, 1973) with Security which designated him as an independent contractor. Petitioner's activities, with respect to Security, were limited to the soliciting of life insurance pursuant to a contract with Robert J. Decker and Associates and Security. Petitioner's income from Security was entirely in the form of commissions. No deductions were made from his commissions for payroll taxes. However, petitioner did participate in a medical plan and group insurance offered by Security.

5. Petitioner placed all orders for insurance through Robert J. Decker & Associates the general agent for Security. Robert J. Decker & Associates rendered all of the clerical and other office work necessary in servicing the

expenses against the commission income earned from Security. All books and records, connected with the business of Security, together with all furniture, supplies and equipment furnished by Security and located in the office of the general agent are the sole property of Security.

6. Petitioner was not permitted to place insurance with any other insurance company, except insurance which was not acceptable to Security. Petitioner also agreed to conform to all rules, regulations and instructions of Security and be supervised by the general agent.

7. Petitioners business expenses were paid by Robert J. Decker & Associates, Ltd. a portion of which was paid by Security.

8. After June 30, 1973 the only business activity that petitioner was engaged in, other than as a salesman, were duties as a corporate officer and employee of Robert J. Decker & Associates, Ltd.

9. The petitioner's representative testified the Security Mutual Life Insurance Company "...did not exercise strict control or overview..." of the petitioner's activities.

CONCLUSIONS OF LAW

A. That sufficient direction and control was not exercised by Security Mutual Life Insurance Company of New York during the years 1973 and 1974 so as to cause petitioner Robert J. Decker to become its employee within the meaning and intent of section 703(b) of the Tax Law.

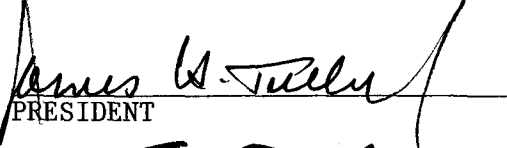
B. That the activities of petitioner Robert J. Decker during 1973 and 1974 as a life insurance salesman with Security Mutual Life Insurance Company of New York constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law.

C. That the petition of Robert J. Decker is denied and the Notices of Deficiency issued December 20, 1976 for the years 1973 and 1974 is sustained, together with such additional interest as may be lawfully owing.

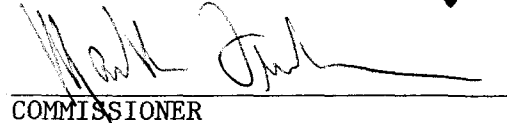
DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER