

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
George L. Doublier

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 1969.

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 18th day of May, 1982, he served the within notice of Decision by certified mail upon George L. Doublier, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George L. Doublier  
2 Edgemere Dr.  
Matawan, NJ 07747

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  
18th day of May, 1982.

*Ann R. Hayden*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
George L. Doublier :

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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 Year 1969 :

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 18th day of May, 1982, he served the within notice of Decision by certified mail upon Barry Salkin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barry Salkin  
Kelley, Drye & Warren  
350 Park Ave.  
New York, NY 10022

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  
18th day of May, 1982.

*Conce P. Haglund*

*J. Vredenburg*

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

May 18, 1982

George L. Doublier  
2 Edgemere Dr.  
Matawan, NJ 07747

Dear Mr. Doublier:

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  
Barry Salkin  
Kelley, Drye & Warren  
350 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
GEORGE L. DOUBLIER  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Year 1969.

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DECISION

Petitioner, George L. Doublier, 2 Edgemere Drive, Matawan, New Jersey 07747, 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 1969 (File No. 19999).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 18, 1979 at 1:15 P.M. Petitioner appeared by Trubin, Sillcocks, Edelman & Knapp, Esqs. (Ethan Levin-Epstein, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUES

I. Whether the business activities of petitioner, George L. Doublier, as an odd-lot broker for 1969, constituted the carrying on of an unincorporated business, thereby subjecting said petitioner to unincorporated business tax.

II. Whether petitioner is eligible for a refund of unincorporated business tax paid for the year 1969 under Article 23 of the Tax Law.

FINDINGS OF FACT

1. Petitioner timely filed a joint New York State Income Tax Nonresident Return for 1969, listing his address as 2 Edgemere Drive, Matawan, New Jersey

07747. Said petitioner filed New York State an unincorporated business tax return for 1969, as well as the prior years of 1967 and 1968.

2. On July 15, 1970, the Audit Division issued a Statement of Audit Changes against petitioner disallowing the subtraction of that portion of a reported gain attributable to the fair market value of the sale of a New York Stock Exchange membership as of December 31, 1959. Petitioner had made such modification on his personal income tax and unincorporated business income tax returns for 1969. This resulted in an increase from \$27,792.47 to \$34,369.11 in personal income tax and an increase from \$20,507.60 to \$25,677.60 in unincorporated business tax. These taxes due were offset against \$59,955.73 in tax withheld, plus payments on estimated tax, resulting in a deficiency of \$90.98 in personal income tax due.

3. Petitioner, George L. Doublier, filed on April 12, 1973, a formal claim for a refund of 1969 unincorporated business taxes paid by him in the amount of \$25,667.60, on the grounds that income earned by him that year was earned as an employee hence not subject to such tax. On June 30, 1975, a formal Notice of Disallowance was mailed to petitioner who, on June 28, 1977, filed a timely petition for a formal hearing.

4. Petitioner, George L. Doublier, was employed by DeCoppet & Doremus, a New York odd-lot stock dealer, in a number of increasingly responsible positions from 1928 to 1954. In 1954, petitioner purchased a membership in the New York Stock Exchange with his own funds and was thereupon engaged by DeCoppet & Doremus as an associate odd-lot broker, a position for which such membership was a prerequisite. This relationship was memorialized in a letter agreement addressed to petitioner and signed by Henry S. Noble on behalf of DeCoppet & Doremus. The sixth paragraph in this agreement reads as follows:

"Your association with us hereafter will be as an independent associate broker and an expert consultant, and not as an employee. You will therefore not participate in any bonuses, or other employee benefits or Social Security payments."

Petitioner also continued as head of the firm's telephone department, a capacity in which he had functioned prior to his engagement as a broker. In June, 1969 petitioner sold his membership on the New York Stock Exchange and terminated his business as an odd-lot stock broker, as indicated on his New York State unincorporated business tax return for 1969.

5. Petitioner was described and treated as an independent associate broker and an expert consultant and not as an employee by DeCoppet & Doremus throughout the period herein involved. Exchange Members acting as associate odd-lot brokers for the firm were uniformly classified as independent contractors by the firm, a relationship which was formally memorialized on the first page of the DeCoppet & Doremus Brokers' Manual.

6. Petitioner was contractually obligated to perform services solely for DeCoppet & Doremus during the period herein involved and was compensated on a commission basis.

7. Petitioner's agreement with DeCoppet & Doremus provided that as an independent odd-lot broker associated with the firm he was ineligible for bonuses, employer social security payments, or other employee benefits.

8. Petitioner has failed to adduce any evidence to establish that DeCoppet & Doremus withheld income taxes or social security taxes from his compensation or made any unemployment insurance payments in his behalf.

9. DeCoppet & Doremus provided petitioner with a work space, secretarial, clerical and local telephone services, and related office facilities free of charge during the period herein involved. Petitioner was charged for long distance telephone calls at cost.

10. Petitioner's general work activities were governed by the DeCoppet & Doremus brokers' manual, which stated the firm's operating policies and procedures, many of which were required by the Floor Department of the New York Stock Exchange. It required petitioner to obtain the consent of a partner before pursuing certain significant courses of action. Subject to such consent, petitioner enjoyed and was encouraged to exercise discretion based on practical experience in performing his day-to-day activities.

#### CONCLUSIONS OF LAW

A. That section 703(a) of the Tax Law defines an unincorporated business as including "...any trade, business or occupation engaged in...by an individual or unincorporated entity...".

B. That pursuant to section 703(b) of the Tax Law, "[t]he performance of services by an individual as an employee...shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by such individual".

C. That the standard to be applied in determining whether or not a taxpayer is an "employee" or an "independent contractor" may be stated as follows:

"The distinction between an employee and an independent contractor has been said to be the difference between one who undertakes to achieve an agreed result and to accept the directions of his employer as to the manner in which the result shall be accomplished, and one who agrees to achieve a certain result but is not subject to the orders of the employer as to the means which are used."  
Matter of Morton, 284 N.Y. 167, at p. 172; quoted in Lieberman v. Gallman, 41 N.Y.2d 774, at p. 778 (1977.)

D. That "[f]rom the nature of the problem the degree of control which must be reserved by the employer in order to create the employer-employee relationship cannot be stated in terms of mathematical precision, and various aspects of the relationship may be considered in arriving at the conclusion in

a particular case." Matter of Liberman v. Gallman, id. at 778. While operational guidelines existed within which petitioner was expected to perform, petitioner has failed to adduce sufficient evidence to establish that as a practical matter such guidelines deprived petitioner of either his operational autonomy or independent discretion in determining the most effective means to pursue DeCoppet & Doremus' ultimate goals.

E. That petitioner failed to sustain his burden of establishing that he was an employee within the meaning and intent of section 703(b) of the Tax Law. Said petitioner demonstrated the indicia of an independent agent or contractor rather than an employee. Matter of Seifer v. State Tax Commission, 58 A.D.2d 726, 396 N.Y.S.2d 493 (3rd Dept. 1977). Accordingly, the income received by said petitioner for his services as an odd-lot broker for 1969 is subject to unincorporated business tax.

F. That the petition of George L. Doublier is denied; therefore, petitioner is ineligible for a refund of unincorporated business tax paid for the year 1969 pursuant to Article 23 of the Tax Law.

DATED: Albany, New York

MAY 18 1982

STATE TAX COMMISSION

James W. Tuck  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Dull  
COMMISSIONER