

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Harvey Blutstein	: : : : : :	: : : : : :
		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

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Harvey Blutstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey Blutstein
66 Wykagyl Terrace
New Rochelle, NY 10804

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 May, 1983.

David Parchuck

James A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Harvey Blutstein :

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

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Myron Bush the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Myron Bush
60 E. 42nd St.
New York, NY 10017

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
6th day of May, 1983.

David Parchuck

Conrad A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Harvey Blutstein
66 Wykagyl Terrace
New Rochelle, NY 10804

Dear Mr. Blutstein:

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
Myron Bush
60 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HARVEY BLUTSTEIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1971,	:	
1972 and 1973.	:	

Petitioner, Harvey Blutstein, 66 Wykagyl Terrace, New Rochelle, New York 10804, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for 1971, 1972 and 1973 (File No. 15571).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1977 at 1:40 P.M. and continued on March 17, 1978 at 9:15 A.M. Petitioner appeared by Myron Bush, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the petitioner, a general agent for a life insurance company, was an employee of the company or was an independent contractor whose income was subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Harvey Blutstein, filed New York State Combined Income Tax Returns with his wife for 1971 and 1973 (IT-208). For 1972, petitioner filed a Joint New York State Resident Return (IT-201). With each New York State income tax return, petitioner filed a New York State unincorporated business tax return on which he indicated "not subject to tax". On each

unincorporated business tax return he described his kind of business as "General Agent - Connecticut Mutual Life Insurance Company". The returns indicated the business began on March 1, 1968.

2. On August 2, 1974, petitioner filed "Notice of Change in Taxable Income" (Form IT-115) as a result of Federal income tax audit for 1971. On August 26, 1975, petitioner filed a Form IT-115 for changes made for 1972 in his Federal taxable income.

3. On April 12, 1976, as the result of a field audit, the Audit Division issued a Notice of Deficiency against petitioner together with a Schedule of Audit Adjustments and Tax Computation Schedule showing unincorporated business tax due as follows:

	<u>Deficiency</u>	<u>Interest</u>	<u>Total</u>
1971	\$ 2,638.76	\$ 632.25	\$ 3,271.01
1972	3,936.54	883.28	4,819.82
1973	5,311.72	793.46	6,105.18
TOTAL	<u>\$11,887.02</u>	<u>\$2,308.99</u>	<u>\$14,196.01</u>

4. Petitioner executed a consent extending the time within which an assessment of personal income and unincorporated business taxes could be made for 1971 to April 15, 1976. Petitioner timely filed a petition for redetermination of the tax deficiency dated April 12, 1976.

5. On February 26, 1968, petitioner signed an agreement with Connecticut Mutual Life Insurance Company, (Company), effective March 1, 1968, wherein petitioner became its General Agent for the New York Agency No. 37 covering the counties of New York, Richmond, Kings, Queens, the Bronx, the island of Long Island, and the counties of Putman, Westchester and Rockland in the State of New York.

6. The General Agent was authorized to act for the Company in contracting with agents and brokers for any of the purposes of the said agency. The

agreement stated "The General Agent is also authorized to act for the Company in soliciting and processing applications for life insurance and annuities in said Company, in delivering policies and other vouchers, and in making collections and remittances."

7. The rates of overriding commissions on various forms of life insurance, endowment, retirement income and annuity policies were set out in detail in the agreement. It was agreed that the commissions and fees provided in the agreement should constitute petitioner's entire compensation for services rendered thereunder.

8. In a six-page memorandum accompanying the agreement effective March 1, 1968, between petitioner and the Company, it was agreed that the Company would pay "... necessary expenses at New York City for office rent, including utilities in excess of \$17,000.00 per annum and clerical assistance at costs satisfactory to it." The memorandum provided in detail for the company to pay telephone costs for calls within the territory of the agency and to the Home Office. It detailed what fees would be paid by the Company to specified personnel of petitioner's agency, including legal fees to a designated law firm. The memorandum stated:

"It is understood and agreed that the above allowance may be discontinued or modified by the Company at any time. You may also charge the Company, during its pleasure, with photo-copy equipment rental at \$28.75 per month. It is further understood and agreed that all other expenses in the operation of the agency shall be assumed by you."

9. The Company agreed to pay petitioner a monthly allowance for supervision and organization expense, the amount of which would be computed by the Home Office. The compensation formula was actually adjusted by negotiation from time to time between petitioner and the Company so as to meet petitioner's financial requirements.

10. Premises occupied by petitioner were subject a lease executed by the Company. Rent was paid by petitioner's check and he was reimbursed by the Company. Problems between petitioner and the lessor were handled by the Company.

11. Petitioner was required to offer all of his personal insurance business to the Company before seeking to write it with any other insurer. He was forbidden to act as a supervisor or general agent for any other company. Petitioner was interdicted from engaging in general insurance such as fire, casualty, automobile, plate glass, or business interruption. Petitioner testified that about ten percent of his income was derived from prior activities as a full-time agent and some contemporaneous personal policy selling in the Company.

12. Petitioner managed the New York field office. He hired supervisors to recruit agents and help train them and assist them in selling policies. He hired bookkeepers, stenographers and clerks. He had about 35 employees. Proposed employees were submitted to the Home Office for determination of their suitability and rates of pay. The Company had final approval on all hirings. The employees were on petitioner's payroll. He was reimbursed by the Company for pension benefits and disability insurance. The necessary forms were filled out in the Home Office. Petitioner signed them as employer. The Form 1099 prepared for petitioner's 1973 income by the Company showed:

"The total shown on the enclosed Internal Revenue Form 1099 was computed as follows:

Total Commissions and Fees (Section I, F796)	155396.49
First Year Expense Allowance (Section II, F796)	136459.65
Graduated Expense Allowance (Section III, F796)	1854.06
Additional Compensation (Section IV, F796)	16234.19

Operating Expense Reimbursement (Form 209)	168179.41
Miscellany: Supplemental	9712.00
Total (Carried to Form 1099)	487835.80

A separate Form 1099 will be prepared for each Home Office code number under which commissions were paid on policies written by the General Agent personally."

13. The Company had a computer in the Hartford Home Office. It installed a terminal in petitioner's New York office. Petitioner paid the Company a monthly amount for its use. Every check written by petitioner went through the computer terminal. The Company did the accounting for petitioner at the Home Office, and sent him statements and print-outs. The Company denied petitioner permission to acquire his own computer.

14. The company owned and furnished all the New York agency furniture except a few personal items purchased by petitioner. When petitioner needed additional items, he notified the Home Office. Such items were furnished and added to the inventory of Company furnishings in the New York office.

15. Hours of operation for the New York office of the petitioner were established by the Company. Holidays were mandated regardless of the wishes of petitioner. While the Company determined what hours it wanted the office open for business, when and for how long petitioner was in or out of the office was within his discretion. Petitioner's vacation had to be approved by the Company. Petitioner was required to report to the Home Office upon request, and on an irregular basis. The work and staff in petitioner's office were audited from time to time by Company officers.

16. Petitioner had no income tax or social security taxes withheld by the Company from his remuneration. Petitioner filed federal income tax Schedule C (Profit (or Loss) From Business or Profession) with his Federal Income Tax Return Form 1040. On the schedule, petitioner took inter alia business deductions