

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of		
Charles Jacobs	:	
		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 1972 - 1974.		
		:

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Charles Jacobs, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Jacobs  
666 Fifth Ave.  
New York, NY 10019

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  
8th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Charles Jacobs :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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Business Tax under Article 23 of the Tax Law for :  
the Years 1972 - 1974. :  
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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Richard B. Rodman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard B. Rodman  
Hall, Dickler, Lawler, Kent & Howley  
460 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  
8th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

July 8, 1983

Charles Jacobs  
666 Fifth Ave.  
New York, NY 10019

Dear Mr. Jacobs:

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) 690 & 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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Richard B. Rodman  
Hall, Dickler, Lawler, Kent & Howley  
460 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  
CHARLES S. JACOBS  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Years 1972,  
1973 and 1974.

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DECISION

Petitioner, Charles S. Jacobs, 666 Fifth Avenue, New York, New York 10019, 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 1972, 1973 and 1974 (File No. 22647).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 21, 1981 at 9:15 A.M. Petitioner Charles S. Jacobs appeared with Richard B. Rodman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a life insurance agent during the years 1972, 1973 and 1974 is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Charles S. Jacobs and Frances H. Jacobs, his wife, timely filed New York State combined income tax resident returns for the years 1972, 1973 and 1974, on which net business income of \$17,680.40, \$19,625.71 and

\$21,077.07, respectively, was reported by petitioner. Petitioner did not file unincorporated business tax returns for the years 1972, 1973 and 1974.

2. On April 14, 1978 the Audit Division issued a Notice of Deficiency for the years 1972, 1973 and 1974 for \$1,743.86 plus penalties and interest, along with an explanatory Statement of Audit Changes, which indicated:

"Based on information submitted in reply to our letter dated January 3, 1977, the business income reported on Federal Schedule C submitted indicates your duties are not confined solely to the sale of life insurance and your actions are those of an independent agent. Therefore, the business income for the three years in question are considered subject to the New York State unincorporated business tax."

"Also, penalty under Section 685(n) of the New York State Tax Law is imposed for the years 1972, 1973 and 1974 for underpayment of estimated taxes."

"Penalty under Section 685(a)(1) and (a)(2) is imposed for the three years in question for failure to file and pay the unincorporated business tax."

3. Petitioner Charles S. Jacobs was a life insurance agent for The Connecticut Mutual Life Insurance Company (hereinafter "Connecticut Mutual") during the years 1972, 1973 and 1974, pursuant to a written agreement, which provided, in part;

- (a) the rate of commissions earned by petitioner on various types of insurance policies.
- (b) petitioner was required to deliver policies, vouchers and make collections according to the instructions of Connecticut Mutual.
- (c) all collections made by petitioner for Connecticut Mutual were to be considered trust funds.
- (d) petitioner had "no authority to make, alter, vary or discharge any contract, or extend the time for payment of premiums; or to waive or extend any obligation or condition; or to take payment of premiums

other than in current funds;...or to receive any money due or to become due the Company except on receipts sent him for collection."

- (e) petitioner was "free to exercise his own judgment as to the time, place and means of soliciting and procuring applications for insurance and annuities..."
- (f) petitioner was required to meet specified production standards.
- (g) petitioner was required to conduct his activities on behalf of Connecticut Mutual on a full-time basis.
- (h) petitioner was required to comply with rules and instructions of Connecticut Mutual in regard to the use of all advertising matter and printed material.
- (i) Connecticut Mutual agreed to assume the cost of fees for licenses and to furnish petitioner with books, card systems of record, necessary blanks and canvassing documents.
- (j) Connecticut Mutual reserved the right to change the rates of commissions earned by petitioner.
- (k) petitioner was restricted to soliciting life insurance and annuities within the territory of Connecticut Mutual's New York City agency.

4. Petitioner Charles S. Jacobs represented Connecticut Mutual through its New York City agency, The Krasne Agency (hereinafter the Agency), during the years 1972, 1973 and 1974.

5. Petitioner was required by practice and policy to submit to Connecticut Mutual all applications for insurance, so that it exercised its right of first refusal.

6. The Agency required petitioner to attend its Monday morning agency meetings and its periodic training seminars. In addition, petitioner was

required to read and comply with all agency communications and to study video tape programs provided by Connecticut Mutual.

7. Connecticut Mutual compensated petitioner on a commission basis, which was paid twice a month and subject to the withholding of social security taxes under the Federal Insurance Contributions Act (F.I.C.A.). In addition, Connecticut Mutual provided petitioner with group fringe benefits, such as medical, life and disability insurance plans, as well as a pension plan.

8. The Agency reimbursed petitioner for expenses incurred as a life insurance agent the sums of \$3,535.00 for 1972, \$3,908.00 for 1973 and \$4,078.00 for 1974, which were included in petitioner's gross commission income.

9. The Agency, as well as Connecticut Mutual, monitored petitioner's activities and accounts, and imposed dress, conduct and production standards.

10. All insurance, such as property and casualty insurance, not accepted by Connecticut Mutual was referred to and handled by Charles S. Jacobs and Associates, Inc., a New York corporation organized by petitioner for that purpose. This corporation paid petitioner a salary, which is not at issue, and rented office facilities at the Agency. However, petitioner reimbursed the corporation 25 percent of the total rent paid by them since approximately 25 percent of the office facilities rented were used for petitioner's activities as a life insurance agent for Connecticut Mutual. The Agency in turn reimbursed petitioner for the aforementioned 25 percent, since he was entitled to free office facilities as a life insurance agent for Connecticut Mutual.

11. The gross commission income at issue (before expenses or deductions) included additional income of \$4,200.00, \$2,771.00 and \$577.00 for the years 1972, 1973 and 1974, respectively, which was not paid by Connecticut Mutual. Approximately 90 percent of this additional income included in the years 1972

and 1973, and 95 percent in the year 1974 represented deferred renewal commissions earned as an employee, prior to his association with Connecticut Mutual.

12. Petitioner Charles S. Jacobs retained the services of a Certified Public Accountant to prepare his New York State tax return for the years 1972, 1973 and 1974, and was not advised to file an unincorporated business tax return for any of these years.

CONCLUSIONS OF LAW


A. That sufficient direction and control was imposed by The Connecticut Mutual Life Insurance Company and The Krasne Agency, on its behalf, so as to cause petitioner Charles S. Jacobs to become its employee in accordance with the meaning and intent of section 703(b) of the Tax Law (Greene v. Gallman, 39 A.D.2d 270, 333 N.Y.S.2d 787 (3rd Dept. 1972), aff'd 33 N.Y.2d 778, 350 N.Y.S.2d 415 (1973)). Accordingly, the income derived therefrom is not subject to the unincorporated business tax.

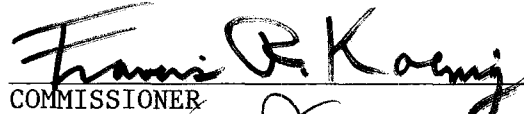
B. That the petition of Charles S. Jacobs is granted and the Notice of Deficiency issued April 14, 1978 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983

  
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PRESIDENT

  
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COMMISSIONER

  
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COMMISSIONER