

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Milton A. Laitman : 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 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Milton A. Laitman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton A. Laitman
76 Echo Bay Dr.
New Rochelle, NY 10805

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
11th day of February, 1983.

David Parchuck

James A. Shepley

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Milton A. Laitman :

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 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Robert S. Raum the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert S. Raum
210 E. 52nd St.
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
11th day of February, 1983.

David Parchuck

James A. Haglund

**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174**

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

February 11, 1983

Milton A. Laitman
76 Echo Bay Dr.
New Rochelle, NY 10805

Dear Mr. Laitman:

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
Robert S. Raum
210 E. 52nd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MILTON A. LAITMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1973.	:	

Petitioner, Milton A. Laitman, 76 Echo Bay Drive, New Rochelle, New York 10805 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 1973 (File No. 19322).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 24, 1980 at 1:15 P.M. Petitioner appeared with Robert S. Raum, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the activities engaged in by petitioner as a life insurance and mutual funds salesman constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Milton A. Laitman, filed a New York State Combined Income Tax Return with his wife, Josephine Laitman, for the year 1973 wherein he reported wages of \$71,646.00 derived from his activities as an insurance and mutual funds salesman. Additionally, he reported other miscellaneous insurance sales income of \$2,847.00 as "business income". Petitioner did not file an unincorporated business tax return for said year.

2. On March 28, 1977 the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that the aforementioned income was subject to the unincorporated business tax. Additionally, adjustments were made to certain business expenses claimed resulting in a deficiency for personal income tax purposes as well, but since such adjustments were conceded by petitioner, they are therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioner under the same date asserting additional personal income tax of \$255.75, unincorporated business tax of \$2,181.56, penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, for failure to file an unincorporated business tax return and failure to pay the tax determined to be due, respectively, of \$883.53 plus interest of \$554.90, for a total due of \$3,875.74.

3. During 1973 petitioner derived income from the sale of life insurance from the following sources:

<u>PRINCIPAL</u>	<u>GROSS EARNINGS</u>
Home Life Insurance Company	\$49,623.00
Modern Woodmen of America	2,173.00
Miscellaneous	2,847.00
TOTAL	<u>\$54,643.00</u>

Income derived from Planned Financial Programs, Inc. for the sale of mutual funds during 1973 was \$19,850.00.

4. Petitioner contended that his status was that of a bona fide employee with respect to services rendered for both Home Life Insurance Company (Home Life) and Planned Financial Programs, Inc. (P.F.P.). Accordingly, he argued that the income derived from these principals is exempt from the imposition of unincorporated business tax.

5. Petitioner has been a full time field underwriter for Home Life on a continuous basis since 1950. During the year at issue he was associated with Home Life's Lake Success, New York agency which was under the management of Elliot B. Rothstein. He was paid on a biweekly basis pursuant to an "Incentive Salary Plan Agreement" dated June 16, 1950, which was still controlling during the year at issue. Although his compensation was termed "salary" it was tantamount to commission since it was determined by a formula of which the primary factor was gross sales. Petitioner's sales territory was not restricted by Home Life.

6. Petitioner was required by Home Life to meet certain production standards and attend regular sales meetings. Additionally, he was furnished with a rate manual, which described how to conduct and solicit business.

7. Home Life provided petitioner with a pension plan, major medical and disability benefit coverage and group insurance, workmen's compensation and unemployment insurance coverage. Home Life reported petitioner's compensation on a wage and tax statement and withheld appropriate Federal and State income taxes as well as social security tax from same.

8. Home Life provided petitioner with an office, secretarial assistance, telephone and stationary at no cost to him.

9. Petitioner's activities for Home Life consisted of the sale of life insurance policies solely. He was obligated to offer all such business to Home Life. In the event Home Life refused to provide coverage, petitioner was free to place such policy with another company.

10. During 1973 approximately 91 percent of petitioner's income derived from insurance sales was from Home Life. The balance of his income derived from insurance sales consisted of \$2,847.00 from policies placed with other

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companies subsequent to Home Life's refusal and \$2,173.00 from Modern Woodmen of America, a fraternal insurance company, for policies of a nature which Home Life did not provide.

11. During 1973 petitioner also derived income from the sale of mutual funds for P.F.P. Petitioner was the sole stockholder and active officer of the company and carried on a portion of his activities for it in his office provided by Home Life. P.F.P., a New York State corporation, paid corporate franchise taxes during the year at issue. Petitioner drew a salary from which appropriate Federal, State and social security taxes were withheld.

12. Petitioner contended that he had reasonable cause for not filing an unincorporated business tax return for 1973 since assessments asserted for unincorporated business tax for the years 1953, 1954, 1955 and 1959 were subsequently withdrawn by the department on the basis of additional information submitted. Petitioner testified that his activities during said years were essentially the same as those during the year at issue herein.

CONCLUSIONS OF LAW

A. That the deficiency asserted for personal income tax is sustained since same was conceded by petitioner.

B. That petitioner's life insurance sales activities for Home Life Insurance Company, constituted services rendered as an employee under a bona fide employer-employee relationship. Accordingly, petitioner was not carrying on an unincorporated business with respect to such services pursuant to section 703(b) of the Tax Law.

C. That petitioner's mutual funds sales activities, engaged in as an officer of Planned Financial Programs Inc., cannot be deemed to constitute the carrying on of an unincorporated business pursuant to section 703(b) of the Tax Law.

D. That although petitioner's "miscellaneous" life insurance sales income of \$2,847.00 and his life insurance sales income derived from Modern Woodmen of America of \$2,173.00 is subject to the unincorporated business tax, such income is too nominal to yield an unincorporated business tax for the year at issue herein.

E. That the petition of Milton Laitman is granted to the extent provided in Conclusions of Law "B" and "C" supra and that said petition is, in all other respects, denied.

F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated March 28, 1977 to be consistent with the decision rendered herein.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 11 1983

ACTING PRESIDENT

*Admiral
Robert Burdick*

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER

00911837

Figure 1