

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT & ELAINE ABRAMSON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~xxxx~~ Period(s) 1967:

State of New York  
County of Albany

Denise Burke , 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 1st day of October , 1976, she served the within  
Notice of Decision by (certified) mail upon Herbert & Elaine  
Abramson (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Herbert & Elaine Abramson  
24 Ridge Rd.  
Albertson, N.Y. 11507  
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~~  
~~xxxx~~) 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

1st day of October , 1976.

Denise Burke

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

October 1, 1976

Herbert & Elaine Abramson  
24 Ridge Rd.  
Albertson, N.Y. 11507

Dear Mr. & Mrs. Abramson:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690 & 722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

  
Frank Puccia

Supervisor of  
Small Claims Hearings

Enc.

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

## STATE TAX COMMISSION

Petitioners, Herbert and Elaine Abramson, 24 Ridge Road, Albertson, New York 11507, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1967 (File No. 76781305). A small claims hearing was held before Paul Coburn, Formal Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1976. Petitioner appeared pro se and for his wife Elaine Abramson. The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel).

I. Whether there is sufficient substantiation and documentary evidence to support the casualty loss and medical expenses claimed by the petitioner.

II. Whether the activities of the petitioner, Herbert Abramson, as a free-lance insurance agent constitute the carrying on of an unincorporated business, subject to the unincorporated business tax and if so, whether the salary received from the taxpayer's insurance corporation was so integrated with his business activities as to constitute additional unincorporated business income.

III. Did petitioner, Herbert Abramson, have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1967.

FINDINGS OF FACT

1. Petitioner, Herbert Abramson and his wife filed a New York State combined income tax return for the year 1967. He did not file any unincorporated business tax returns for said year.

2. On February 22, 1971, the Income Tax Bureau issued two statements of audit changes, the first one against the petitioner, Herbert Abramson, imposing unincorporated business tax for the year 1967 upon his income as a free-lance insurance agent on the grounds that said business activities constitute the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a Notice of Deficiency for the year 1967 in the sum of \$519.79.

3. The second Statement of Audit Changes was against the petitioners, Herbert and Elaine Abramson, upon the grounds that the medical and dental expenses and casualty loss deduction were not sufficiently documented and accordingly, issued a Notice of Deficiency for the year 1967 in the sum of \$215.73.

4. The medical and dental expenses claimed, after the 1% and 3% adjusted gross income limitations, is \$1,215.01. The Income Tax Bureau upon an audit disallowed \$408.64.

5. A casualty loss in the amount of \$1,870.00 is claimed on the petitioners' return due to a burglary which occurred at the petitioners' residence on July 27, 1967. The Income Tax Bureau

disallowed the loss in full for lack of adequate documentary evidence.

6. Photostats of cancelled checks and receipts are submitted by the petitioner, Mr. Abramson, relating to medical and dental expenses and casualty loss deduction claimed for the year 1967.

7. During the year 1967 the petitioner, Herbert Abramson, was a life and casualty insurance sales agent. The petitioner worked for Samuel Scheller and Company, Inc. on a salary basis selling various casualty insurance. He also sold life insurance for several other insurance companies on a commission basis.

8. The petitioner was the owner and president of Samuel Scheller Company, Inc. and was the only insurance salesman for the firm. The firm employed, besides Mr. Abramson, two secretaries. Federal income tax, New York State income tax and social security tax were withheld from his salary income of \$9,815.00. He was covered under workmans compensation and unemployment insurance.

9. The petitioner's life insurance commission income of \$12,964.83 was not subject to any withholding taxes and he was not covered under any employee plans of the life insurance companies, such as health and pension plans.

10. Mr. Abramson set his own time and work schedules and often sold both life and casualty insurance simultaneously to the same clients. All of the commissions earned by the petitioner, both the casualty insurance commissions received in the firm's name and the life insurance commissions received in the petitioner's name were mailed to the corporation.

11. Petitioner, Herbert Abramson, was never advised by his accountant that he was required to file a New York State Unincorporated Business Tax return for the year 1967.

CONCLUSIONS OF LAW

A. That based upon the evidence submitted by the petitioners, the medical and dental expenses claimed have been documented in total.

B. That the casualty loss claimed by the petitioners, according to the evidence submitted has been allowed in the amount of \$738.00 thereby reducing the disallowance to \$1,132.00.

C. That the income received by petitioner, Herbert Abramson, during the year 1967 from the several life insurance companies, with whom he placed life insurance, constituted receipts from his regular business as a free-lance insurance agent.

D. That the aforesaid activities of petitioner, Herbert Abramson, during the year 1967 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

E. That the services rendered by petitioner, Herbert Abramson, during the year 1967 in connection with the casualty insurance business of Samuel Scheller and Company, Incorporated were so integrated and interrelated with his activities in connection with his life insurance business as to constitute a part of his free-lance insurance business regularly carried on by him and, therefore, the salary received by him from said company was also subject to the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

F. That the petitioner, Herbert Abramson, had reasonable cause for not filing New York State unincorporated business tax returns for the year 1967.

G. That the petition of Herbert and Elaine Abramson is granted to the extent of allowing the medical expenses claimed in full and reducing the casualty loss disallowed by the Income Tax Bureau from \$1,870.00 to \$1,132.00.

H. That the petition of Herbert Abramson is granted to the extent of cancelling the penalty imposed pursuant to section 685 (a) of the Tax Law in the sum of \$91.44 for the year 1967 and that the Income Tax Bureau is hereby directed to modify the Notices of Deficiency issued February 22, 1971 and, except as so granted, the petition in all other respects is denied.

DATED: Albany, New York  
October 1, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER