

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX and LUBA ABROTSKY

For a Redetermination of a Deficiency or
~~Revision of a Determination~~ Refund
of Personal Income and Unincorporated
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year(s) or Period(s) 1972.

AFFIDAVIT OF MAILING

State of New York
County of Albany

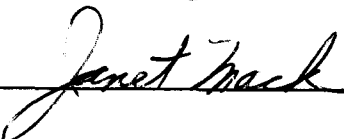
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September, 1977, she served the within
Notice of Decision by (certified) mail upon Max and Luba
Abrotsky (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Max Abrotsky
7903 155th Avenue
Howard Beach, New York 11414

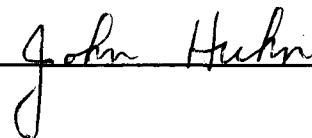
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September, 1977.







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

September 29, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. and Mrs. Max Abrotsky
7903 155th Avenue
Howard Beach, New York 11414


Dear Mr. and Mrs. Abrotsky:

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 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MAX and LUBA ABROTSKY	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Year 1972.	:	

Petitioners, Max and Luba Abrotsky, residing at 7903 155th Avenue, Howard Beach, New York 11414, have filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1972. (File No. 14171).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 2:45 P.M. Petitioner Max Abrotsky appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Did the activities of petitioner Max Abrotsky, as an insurance salesman, during the year 1972 constitute the carrying on of an unincorporated business?

II. What was the total amount of estimated tax paid by petitioners, Max and Luba Abrotsky, for the year 1972?

FINDINGS OF FACT

1. Petitioner Max Abrotsky was an insurance agent working for Columbian Mutual Life Insurance Company, hereafter referred to as "Columbian", and its general agent, Safe-Way Agency, during the year 1972.

2. Petitioner worked under an employment contract for Columbian. He was provided with office space, telephone service, secretarial help and stationery at no cost to himself. Petitioner's only expenses were outside expenses such as gasoline, tolls and parking.

3. Columbian paid petitioner on a commission basis. It did not withhold taxes or social security from his compensation. Columbian provided major medical, disability, accident and life insurance at no cost to petitioner.

4. Petitioner was under the supervision of his general agent. He spent most of the day at the office engaged in following up leads by telephone and correspondence and following up on delinquent clients. He then worked in the field when he completed his inside work.

5. Petitioner did not maintain an office in his home. He had no business telephone listed in his name nor did he have his own letterhead. Petitioner did not hire assistants. Ninety-nine percent of his total business was placed with Columbian.

6. Petitioners reported \$100.00 estimated tax paid for the year 1972. The Income Tax Bureau's records showed \$50.00 estimated tax paid. Petitioners failed to submit any substantial evidence that an amount more than \$50.00 had been paid.

CONCLUSIONS OF LAW

A. That petitioner Max Abrotsky's activities as an insurance agent for Columbian Mutual Life Insurance Company during the year 1972 constituted services performed as an employee and his income therefrom was exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

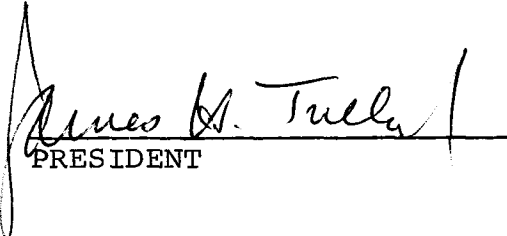
B. That petitioners, Max and Luba Abrotsky, paid only \$50.00 of the \$100.00 claimed as estimated tax paid for the year 1972.

C. That the Income Tax Bureau is hereby directed to reduce the amount of the tax due shown on the Notice of Deficiency issued February 24, 1976 from \$325.58 to \$50.00 plus any interest that is legally owing.

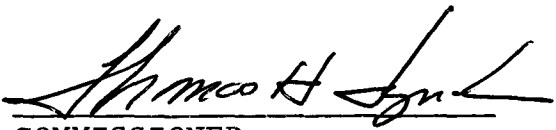
D. That the petition of Max and Luba Abrotsky is granted to the extent as shown in C above, and is in all other respects denied.

DATED: Albany, New York
September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER