

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

October 9, 1979

Gary P. DiCresce
17 Woodstead Rd.
Ballston Lake, NY 12019

Dear Mr. DiCresce:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Harvey M. Lifset
112 State St., Suite 1300
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Gary P. DiCresce :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income & UBT :

under Article 22 & 23 of the Tax Law

for the Years 1974 & 1975. :

State of New York

County of Albany

Jay Vredenburg, 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 9th day of October, 1979, he served the within notice of Decision by certified mail upon Gary P. DiCresce, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary P. DiCresce

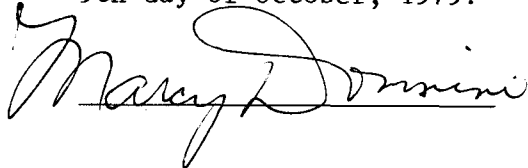
17 Woodstead Rd.

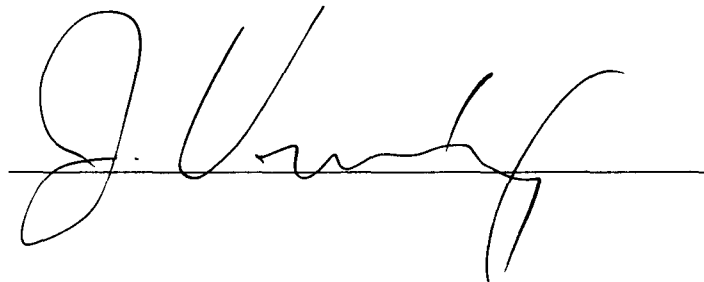
Ballston Lake, NY 12019

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
9th day of October, 1979.


Mary Dominici



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Gary P. DiCresce :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income & UBT :

under Article 22 & 23 of the Tax Law

for the Years 1974 & 1975. :

State of New York

County of Albany

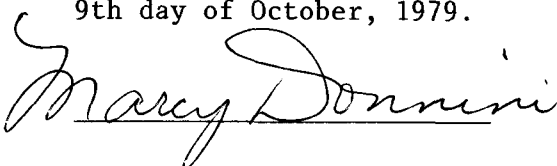
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Harvey M. Lifset the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

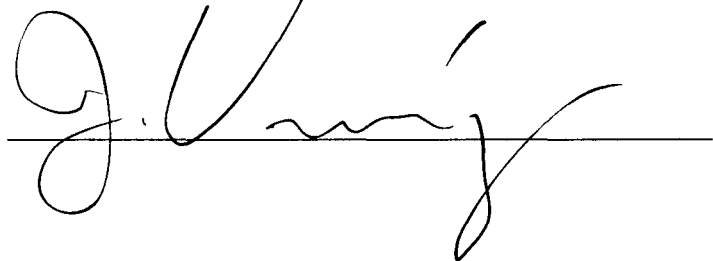
Mr. Harvey M. Lifset
112 State St., Suite 1300
Albany, NY 12207

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
9th day of October, 1979.


Mary Donnini



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GARY P. DICRESCE	:	DECISION
	:	
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 Years 1974 and 1975.	:	

Petitioner, Gary P. DiCresce, 17 Woodstead Road, Ballston Lake, New York 12019, 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 years 1974 and 1975 (File No. 21090).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 14, 1978 at 9:15 A.M. Petitioner appeared with Harvey M. Lifset. The Income Tax Bureau appeared by Peter Crotty, Esq. (Barry M. Bresler and Kathy L. Sanderson, Esqs., of counsel).

ISSUE

Whether the income received by petitioner from his activities as an insurance agent was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Gary P. DiCresce, filed New York State income tax resident returns for 1974 and 1975 on Form IT-208. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau held petitioner's income from his activities as an insurance agent subject to unincorporated business tax. It issued him a Notice of Deficiency dated December 19, 1977 for \$2,018.67 in unincorporated business tax for 1974 and 1975. On the same Notice, the Income Tax Bureau

also made adjustments to petitioner's 1975 personal income tax return. A portion of his auto expense was disallowed, which resulted in additional personal income tax due of \$140.34, plus interest on both taxes of \$401.69, for a total due of \$2,560.70.

3. Petitioner agreed to the adjustments made by the Income Tax Bureau with respect to his 1975 personal income tax return.

4. Petitioner was a full-time field underwriter who solicited insurance applications for Mutual Life Insurance Company of New York (hereafter "MONY"). His employment contract with MONY prohibited sales of insurance for any other principal. MONY provided petitioner with office space, office supplies and equipment. It also provided petitioner with partial telephone service and secretarial help at its place of business.

5. Petitioner was subject to standards established by MONY and was required to attend all company functions and business meetings. Petitioner was covered by MONY's employee retirement plan, and deductions were made from his compensation for social security. Petitioner was also covered by the company's life insurance, medical insurance and disability insurance.

6. Petitioner incurred office expenses, including additional office supplies and furniture which were not provided for by MONY. Most of these expenses resulted from the cost of renting and installing a large photo-copier on MONY's premises, which the company later took over and for which it partially reimbursed petitioner.

7. During the years at issue, petitioner paid fees to an attorney/accountant (a MONY employee) who owned a computer. These fees were paid for computer services, as well as for professional consultations.

8. Petitioner also had telephone expenses in excess of the \$300.00 a month which was paid for by MONY.

9. During the years at issue, petitioner worked for no other principal.

10. Petitioner employed his wife to perform clerical work related to his selling activities. Though his wife had permission to work on the company's premises, she was not allowed to have access to company records. Petitioner did not employ assistants.

11. Petitioner's letterhead and business cards showed the address and phone number of MONY.

CONCLUSIONS OF LAW

A. That petitioner, Gary P. DiCresce's activities as an insurance agent for Mutual Life Insurance Company of New York during 1974 and 1975 were services performed as an employee; thus, said activities are not deemed to be those associated with an unincorporated business by virtue of section 703(b) of the Tax Law.

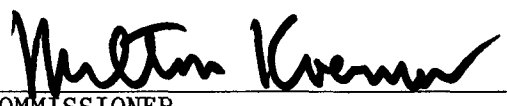
B. That the petition of Gary P. Dicresce is granted to the extent of cancelling the unincorporated business tax due of \$2,018.67; however, the petition is denied with respect to the imposition of additional personal income tax due of \$140.34. The Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued on December 19, 1977 and that, except as so granted, the petition is in all other respects denied.

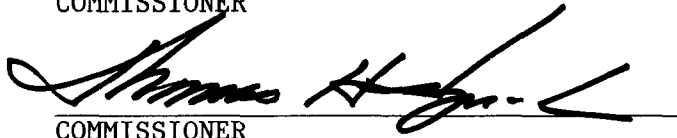
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER