

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

LEEAM WEATHERS-LOWIN AND JEAN WEATHERS-LOWIN

DECISION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1980.

Petitioners, Leeam Weathers-Lowin and Jean Weathers-Lowin, 21 Fox Run Lane, Greenwich, Connecticut 06831, 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 1980 (File No, 61105).

A 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 May 14, 1986 at 2:45 P.M. Petitioner Leeam Weathers-Lowin appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether petitioner Leeam Weathers-Lowin's 1980 business activities were carried on without New York State, during such time as he was a nonresident of New York, thereby rendering such income exempt from unincorporated business tax.

II. Whether petitioner Leeam Weathers-Lowin's activities as a "risk-reward analyst" constituted the practice of a profession, thereby rendering his business income derived therefrom exempt from unincorporated business tax.

FINDINGS OF FACT

1. Leeam Weathers-Lowin (hereinafter "petitioner") and his wife, Jean Weathers-Lowin, timely filed a New York State Income Tax Resident Return for the year 1980 whereon petitioner reported business income of \$363,434.00. On said return, petitioner's occupation was reported as "investor". Petitioner did not file an unincorporated business tax return for 1980.

2. On October 29, 1983, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's net profit from business of \$363,434.00 was held subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued against them on January 5, 1984 asserting unincorporated business tax of \$14,137.36, penalties of \$6,154.50 and interest of \$4,617.65, for a total due of \$24,909.51. Said penalties were asserted for failure to file a 1980 unincorporated business tax return, failure to pay the tax determined to be due and failure to file a declaration of estimated unincorporated business tax pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law respectively. Said sections are incorporated into Article 23 of the Tax Law by section 722(a).

3. Petitioner alleges that his business income is exempt from the imposition of unincorporated business tax since:

(a) such income was derived from his activities as a "risk-reward analyst" and that such activities constituted the practice of a profession; and

(b) such income was earned in California while he was a resident of said state.

4. Petitioner further claims that, based on the above, such income was mistakenly reported for personal income tax purposes. "However, it is the

raise this as an issue herein since the period of limitations for refunds of personal income tax had previously expired.

5. Prior to May 1980, petitioner was a resident of California.

6. On May 5, 1980, petitioner sold his California home and moved to New York. He stayed in a hotel in Westchester County while construction on his New York home was being completed. In July 1980, he moved into the garage of his New York home and, in September 1980, he completed his move into the home.

7. Petitioner is a world-renowned expert on risk-reward analysis. His specialty **is** in the area of investments.

8. Petitioner's 1980 business income **of** \$363,434.00 was derived from activities which consisted of advising clients of which investments to make based on his analysis of the stock market and events affecting the market.

9. On petitioner's 1980 Federal Schedule **C**, he reported his main business activity as "consulting". In a letter to the Audit Division dated November 17, 1983, petitioner stated that his profession was "investment consultant".

10. All **of** petitioner's 1980 business income was earned and received prior to his move **to** New York. The services relative to the receipt of such income were rendered by petitioner in an office maintained in his home in California. His business gross receipts for 1980 were \$392,370.00. Of said amount, \$350,000.00 was derived from one client who realized a gain of nearly one million dollars based on petitioner's advice.

11. Petitioner attended Columbia University, but he dropped out prior to graduating.

12. All of petitioner's business gross income was derived from personal services he personally rendered.

13. Capital was not an income producing factor in petitioner's business.
14. Petitioner's wife was not involved in his business activities.

CONCLUSIONS OF LAW

A. That, in general, an unincorporated business is carried on at any place either within or without New York State where the unincorporated business entity has a regular place of business (20 NYCRR 207.2[a]).

B. That petitioner's entire unincorporated business was carried on in the State of California during that portion of 1980 during which he was a resident of said state. Accordingly, the income derived therefrom is not subject to New York State unincorporated business tax.


C. That in view of Conclusion of Law "B", supra, the issue with respect to whether petitioner's activities constituted the practice of a profession is moot.

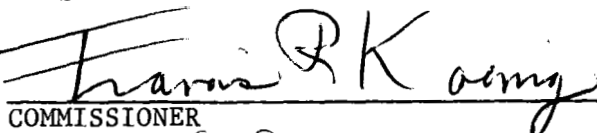
D. That the petition of Leeam Weathers-Lowin and Jean Weathers-Lowin is granted and the Notice of Deficiency issued January 5, 1984 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986


PRESIDENT


COMMISSIONER


COMMISSIONER