

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM F. ACKERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income and :
Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~xxxPeriod(s)~~ :
1968 and 1969.

State of New York
County of Albany

Catherine Steele, 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 13th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon William F. Ackerman

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. William F. Ackerman
Two Moyer Place
Oakland, California 94611

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)~~
~~xxxthe~~ 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

13th day of September, 1976.

Catherine Steele

Janet Mack



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

Mr. William F. Ackerman
Two Moyer Place
Oakland, California 94611

Dear Mr. Ackerman:

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 decision 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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
WILLIAM F. ACKERMAN
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 1968 and 1969.

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DECISION

Petitioner, William F. Ackerman, Two Moyer Place, Oakland, California 94611, petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1968 and 1969.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on April 12, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer appeared pro se and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did the taxpayer conduct an unincorporated business in 1968 and 1969 subject to New York State unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, William F. Ackerman, timely filed New York State income tax returns for the years 1968 and 1969. He did not file unincorporated business tax returns for either of those years.

2. A Notice of Deficiency in personal income and unincorporated business taxes for the years 1968 and 1969 was issued on May 24, 1971, against the taxpayer under File No. 9-49181901.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The taxpayer conceded that the Notice of Deficiency was correct in allowing him a refund for 1968 and 1969 of personal income tax in the amount of \$7.37. There is no issue of personal income tax.

5. The Income Tax Bureau contended that \$53,824.64 of the taxpayer's 1968 income and \$39,420.66 of his 1969 income were subject to the unincorporated business tax as it considered him in business as a management consultant.

6. In 1968 the taxpayer was paid \$8,000.00 in severance pay by Transamerica Corporation in California. Taxpayer accrued this income from his previous work for this company at their California

location and while he was a resident of California. The taxpayer was an employee and a company officer of Transamerica Corporation.

7. The taxpayer was paid \$29,787.32 by Knight & Gladieux Inc. of New York in 1968. Although he only worked part-time, he was subject to substantial direction and control by this firm in the areas of what work he did, when and where he did it and with whom he met in his attempts to obtain acquisition and merger business for the firm. He was assigned to contact specific companies. The firm billed customers on the day-to-day services of the taxpayer to the customer and reimbursed the taxpayer for these services and his expenses. Knight & Gladieux Inc. provided him with an office, a secretary and the other normal accoutrements of a corporate executive. The taxpayer had no stationery of his own and business cards had the firm name on them. The taxpayer solicited no business on his own. When the taxpayer was approached, on one occasion in 1968, to do a consulting job on his own, he refused and instead asked that he be given the job through Knight & Gladieux Inc. This resulted in a substantial loss of income to the taxpayer (\$7,500.00) as compared with his working on his own.

8. During 1968 it became apparent that the taxpayer was not very successful in his work for Knight & Gladieux Inc., although he continued working for them into 1969 on a lesser part-time basis

but still subject to substantial direction and control. In 1969 he was compensated \$5,440.09 by this firm.

9. Because of the decline in his fortunes at Knight & Gladioux Inc. in 1968, the taxpayer took part-time work with Polymer Corporation Limited of Canada.

10. The taxpayer worked Mondays to Thursdays in Canada and overseas for Polymer, and Canadian taxes were deducted from his 1968 pay of \$16,037.32. At Polymer he was subject to substantial direction and control of his work in such areas as what days or hours he worked, whom he saw and when and on what dates he went overseas and where he went. Polymer provided the taxpayer with an office in Canada and a secretary, reimbursed his expenses and in general supplied him with the other normal accoutrements of a corporate executive.

11. In 1969 the taxpayer worked for Polymer Corporation Limited under the same circumstances as his 1968 work. He was paid \$27,422.75 in 1969.

12. The taxpayer received \$6,557.82 in direct payments for one evaluation study for International Utilities Inc. in 1969. This was management consultant work that was solicited by Alden S. Bennett, Vice-President of International Utilities Inc., on a one-time basis. Previous work in 1968 that the taxpayer performed for

International Utilities Inc. had been paid for to Knight & Gladieux Inc. under the taxpayer's arrangement with that firm.

13. The taxpayer acted in good faith respecting unincorporated business taxes.

CONCLUSIONS OF LAW

A. The taxpayer's compensation from Transamerica Corporation in 1968 was severance pay accrued while the taxpayer was a California resident and an employee of Transamerica Corporation. It was not income from the carrying on of an unincorporated business in New York State.

B. The taxpayer was an employee of Knight & Gladieux Inc. in 1968 and 1969. He was employed to seek out mergers and acquisition business for that firm. In his activities for that corporation, as a corporate executive, he was under its substantial direction and control to such an extent that he cannot be considered to be carrying on unincorporated business services.

C. The taxpayer's compensation for part-time work as an employee of the Polymer Corporation of Canada was for work done in Canada and overseas. He had Canadian withholding taxes taken out of his pay from the Polymer Corporation. This pay was employee compensation and not subject to New York State unincorporated business tax.

D. The taxpayer's 1969 work for International Utilities Inc. was management consultant work and therefore the taxpayer was carrying on an unincorporated business with reference to income received from International Utilities.

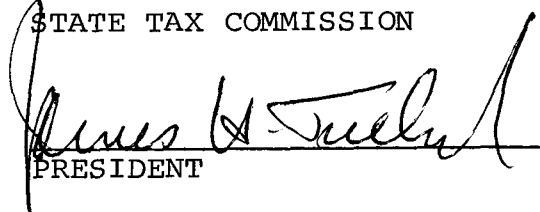
E. The taxpayer conceded that his income tax refund due was correctly stated by the Notice of Deficiency.

F. The taxpayer acted in good faith and penalties are cancelled. It is determined that there is no deficiency against petitioner in unincorporated business tax for the year 1968. In 1969 the taxpayer's income from the International Utilities was subject to unincorporated business tax.

G. Pursuant to the Tax Law, interest shall be added to the total amount of the deficiency or refund until the date of payment. The Notice of Deficiency shall be modified in accordance with this decision.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER