

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALAN N. ALPERN and GIUSEPPINA ALPERN :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund
of ^{Income} Unincorporated Business & Personal :
Taxes under Article(s) 22 and 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ 1967; :
1968 and 1969.

State of New York
County of Albany

Carmen Mottolese , 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 , 1976 , she served the within Notice of Decision by (certified) mail upon Alan N. Alpern and Giuseppina Alpern ~~XXXXXXXXXXXX~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Alan N. Alpern
45 East 89th Street
New York, New York 10028

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)~~ ~~XXXXXXXXXXXX~~ ~~XXXXXXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this
29th day of September , 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

September 29, 1976

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

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

Mr. & Mrs. Alan N. Alpern
45 East 89th Street
New York, New York 10028

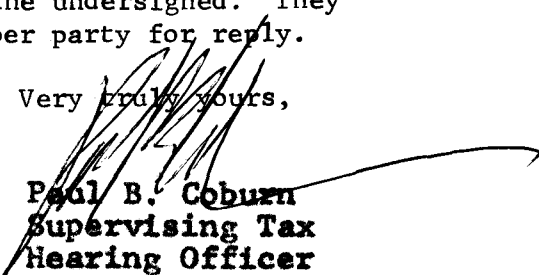
Dear Mr. & Mrs. Alpern:

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

Please take further notice that pursuant to
Section(s) **690 and 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,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALAN N. ALPERN and GIUSEPPINA ALPERN
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 1967, 1968 and 1969.

DECISION

Petitioners, Alan N. Alpern and Giuseppina Alpern, of 45 East 89th Street, New York, New York 10028, have 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 1967, 1968 and 1969.

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 1, 1976, at 9:15 a.m. The taxpayer, a member of the New York bar, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUE

Whether the income derived from petitioner's personal services as a financial consultant and attorney was exempt from taxation under the unincorporated business tax as being derived from the practice of a profession.

FINDINGS OF FACT

1. As the result of an audit of petitioners, Alan N. Alpern and Giuseppina Alpern's income tax returns for 1967, 1968 and 1969, they were sent a Statement of Audit Changes dated April 13, 1973, for both income and unincorporated business taxes allegedly due amounting to \$7,811.40, plus penalties of \$319.23, and interest of \$1,688.80, for a total demanded of \$9,819.43. On the same date, April 13, 1973, a Notice of Deficiency was sent to them.

2. Petitioner, Alan N. Alpern, graduated from Harvard College and Harvard Law School. He has been admitted to the bar in the Commonwealth of Massachusetts and the State of New York. He was a member of a law firm in Boston for a number of years and then went into individual private practice in New York City. He specialized in organizing and recapitalizing corporations, devising options and other compensation arrangements, preparing letters of intention, contracts and employment agreements. Petitioner also devised plans

for refinancing or new financing for corporations, including determination of the rights of purchasers of such securities, their status under applicable securities laws, and the like. A small portion of work done by petitioner, Alan N. Alpern, consisted of performing economic evaluation of certain corporations which were the targets of possible acquisition by clients of the petitioner. Less than ten percent of petitioner's gross income was derived from the latter financial consultation.

3. Many of the clients of the petitioner, Alan N. Alpern, were corporations which retained regular general counsel. Petitioner was engaged for particular projects. He chose to describe himself as financial consultant rather than special counsel for fear of causing conflict with general counsel relationships.

4. Petitioner, Alan N. Alpern, maintained his own offices. He did not specify any occupation or specialty on his letterhead. When he needed attorneys to assist him, he retained them but kept no regular office staff.

5. Petitioner, Alan N. Alpern, was not an employee of any of the corporations to whom he sold his services during the years at issue.

6. Petitioner, Alan N. Alpern's denomination of himself as "consultant and executive" on his income tax returns was not

accurately descriptive of his business activities. The title petitioner applied to his work did not indicate that he was engaged in selling professional, personal legal services predicated upon his wide knowledge of tax law, securities, technicalities, economic and financial factors in corporate reorganizations, refinancing and take-overs.

CONCLUSIONS OF LAW

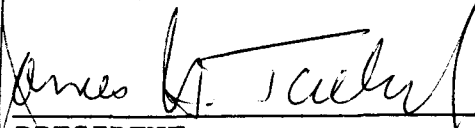
A. That the petitioner, Alan N. Alpern, was engaged in the practice of law, albeit in a specialty requiring use of economic and financial expertise acquired after his admission to the bar in New York and Massachusetts.

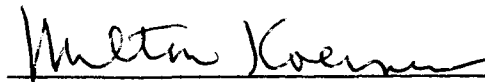
B. That the practice of law is exempt from taxation as an unincorporated business under the Tax Law, section 703(c).

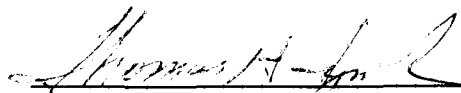
C. That the petition of Alan N. Alpern and Giuseppina Alpern is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York
September 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BENNET ALTMAN

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1972

State of New York
County of Albany

MARYLOU SAMUELS, 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 6th day of July, 1976, she served the within Notice of Decision ~~(or Determination)~~ by (certified) mail upon Bennet Altman ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Bennet Altman
1063 Linden Street
Valley Stream, New York 11580
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ 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

6th day of July, 1976.

Jenit Mack

Marylou Samuels



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

July 6, 1976

TELEPHONE: (518) 457-3850

Mr. Bennet Altman
1063 Linden Street
Valley Stream, New York 11580

Dear Mr. Altman:

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

Please take further notice that pursuant to
Section(§) **690** 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,

Aloysius Nendza
ALOYSIUS NENDZA

Acting Supervisor of
Tax Conferences

Enc.

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
BENNET ALTMAN

DEFAULT ORDER

for Redetermination of Deficiency or for Refund of
Personal Income
Taxes under Article(s) 22 of the Tax Law for the
Year(x) 1972

Petitioner(s) Bennet Altman, 1063 Linden St., Valley Stream, N.Y. 11580)
filed a petition for redetermination of deficiency
or for refund of Personal Income taxes under Article(s) 22
of the Tax Law for the year(s) 1972 . File No. (s) 2-19020507.

A Conference on the petition was scheduled before
Murray Ginsberg, Conferee , at the offices of the State
Tax Commission, Two World Trade Center, New York, New York, Rm. 6531,
on May 19, 1976 at 9:00 a.m. . Notice of said Conference
was given to petitioner(s) and petitioner(s) representative,

. Petitioner(s) ~~xxxxxx~~ did
not appear at the Conference . A default has been duly noted.

Now on motion of the attorney for the Department of Taxation and Finance,
it is

ORDERED that the petition of Bennet Altman
be and the same is hereby denied.

DATED: Albany, New York
, July 6, 1976

STATE TAX COMMISSION

James W. Tull

PRESIDENT

Melvin Koerner

COMMISSIONER

Thomas H. Lynn

COMMISSIONER