

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT F. & LIBBY R. McCausland

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~by Period(s)~~
1968, 1969 and 1970

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

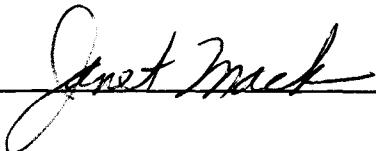
Notice of Decision by (certified) mail upon Robert F. & Libby R.
McCausland ~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert F. & Libby R. McCausland
26805 Carranza Drive
Mission Viejo, California 92675

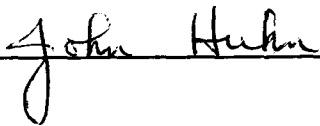
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

Robert F. & Libby R. McCausland
26805 Carranza Drive
Mission Viejo, California 92675

Dear Mr. & Mrs. McCausland:

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 CHYRYWATY
HEARING OFFICER

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
cc: Petitioner's Representative

Taxing Bureau's Representative

ISSUES

I. Whether petitioner Robert F. McCausland's activities as a mutual funds wholesaler for the years 1968 and 1969 qualified him for a professional exemption under section 703(c) of the Tax Law.

II. Whether the petitioners, Robert F. and Libby R. McCausland, properly prorated the exemptions, statutory credit and itemized deductions for the year 1970, with respect to a change of residence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioners, Robert F. and Libby R. McCausland, timely filed New York State resident income tax returns for the years 1968 and 1969. Petitioner Robert F. McCausland did not file New York State unincorporated business tax returns for said years. The petitioners filed a 1970 New York State nonresident income tax return and indicated thereon that they were residents of New York State from January 1, 1970 through September 30, 1970.

2. On October 29, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Robert F. and Libby R. McCausland, imposing unincorporated business tax upon the business income received by petitioner Robert F. McCausland during the years 1968 and 1969, on the grounds that his selling activities constituted the carrying on of an unincorporated business and that his income derived therefrom was subject to unincorporated business tax. The

Bureau also prorated the exemptions, statutory credit and itemized deductions claimed on the petitioners' 1970 nonresident return due to a change of residence during said year. The refund of \$1,139.51 due for the year 1970 was applied to the unincorporated business tax liability for the years 1968 and 1969.

3. Petitioners moved from New York State to Harlington, Texas on September 30, 1970.

4. Petitioner Robert F. McCausland was a mutual fund wholesaler during the years 1968 and 1969. During these years, his work consisted of promoting the sale of shares in various funds for the principal underwriter, Shareholders Management Company, in the New York City Metropolitan area.

5. Petitioner Robert F. McCausland's duties as a mutual funds wholesaler were to induce "qualified broker-dealers" doing business in said petitioner's assigned territory to become members of, and to continue as members of a selling group with Shareholders Management Company and to promote the sale of shares in the said petitioner's assigned territory through "qualified members" of the selling group.

6. Petitioner Robert F. McCausland stated that he was not an employee of Shareholders Management Company. He maintained,

however, that he was a professional by virtue of his knowledge and expertise in his field.

7. Petitioner Robert F. McCausland attended Dartmouth College and received a Bachelor's degree in Economics.

8. Capital was not a material income producing factor and more than eighty per cent (80%) of his income was derived from services rendered by him.

9. That the activities of petitioner Robert F. McCausland as a mutual funds wholesaler during the years 1968 and 1969, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

10. That the aforesaid activities of petitioner Robert F. McCausland during the years 1968 and 1969, constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

11. That the exemptions, statutory credit and itemized deductions claimed by the petitioners for the year 1970 were properly prorated, with respect to their change of residence,

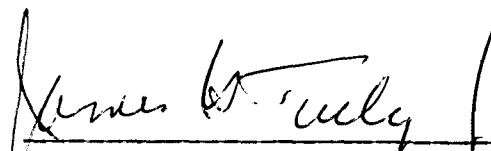
by the Income Tax Bureau in accordance with the meaning and intent of section 654 of the Tax Law.

12. That the petition of Robert F. and Libby R. McCausland is denied and the Notice of Deficiency in the sum of \$3,667.86 issued on October 29, 1973 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION


September 29, 1977



PRESIDENT



COMMISSIONER



COMMISSIONER