

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BENJAMIN LEVY and ANN LEVY

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 ~~(XXXXXX Period(s))~~ 1972 :

State of New York
County of Albany

John Huhn, 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 20th day of September, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Benjamin Levy and Ann Levy


~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Benjamin Levy and Ann Levy
44 Highview Avenue
Liberty, New York 12754

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

20th day of September, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

BENJAMIN and ANN LEVY

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 year 1972.

DECISION

Petitioners, Benjamin and Ann Levy, 44 Highview Avenue, Liberty, New York 12754,
filed a petition for redetermination of a deficiency or for refund of personal in-
come and unincorporated business taxes under Articles 22 and 23 of the Tax Law for
the year 1972 (File Nos. 12213 and 12214).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the
offices of the State Tax Commission, Two World Trade Center, New York, New York,
on October 17, 1977 at 2:45 P.M. Petitioner Benjamin Levy appeared pro se and
for his wife, petitioner Ann Levy. The Income Tax Bureau appeared by Peter Crotty,
Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the activities of petitioner Benjamin Levy as a real estate broker,
insurance consultant and public insurance adjuster during 1972 constituted 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.

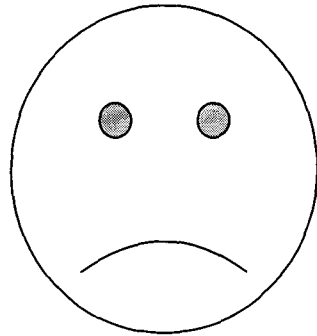
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CORRECTION FOLLOWS



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BENJAMIN and ANN LEVY : 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 year 1972. :
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ISSUE

Whether the activities of petitioner Benjamin Levy as a real estate broker, insurance consultant and public insurance adjuster during 1972 constituted 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.

FINDINGS OF FACT

1. Petitioners, Benjamin and Ann Levy, timely filed a New York State personal income tax return for 1972. Petitioner Benjamin Levy did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau contended that petitioner Benjamin Levy was engaged in the carrying on of an unincorporated business and that the income derived therefrom was subject to the unincorporated business tax. It issued a Notice of Deficiency to him on May 19, 1975 in the amount of \$656.81 in unincorporated business tax, plus \$103.11 in interest, for a total due of \$759.92.

3. The Income Tax Bureau also issued a Notice of Deficiency for 1972 against petitioners, Benjamin and Ann Levy, for certain adjustments made for personal income tax purposes, in the amount of \$779.19 in personal income tax, plus \$122.33 in interest, for a total due of \$901.52. Petitioners conceded the validity of the deficiency and this matter is not at issue.

4. Petitioner Benjamin Levy was a licensed real estate broker and as such, he performed some services during 1972 which accounted for a small amount of his income. His main source of income was derived from services performed as an insurance consultant and public insurance adjuster.

5. As an insurance consultant, petitioner Benjamin Levy advised clients as to all aspects of their insurance coverage. As a public adjuster, he represented clients in matters involving settlements of claims with their insurance companies.

6. Petitioner conceded that he was self employed. He maintained an office from which he carried on his activities and was paid on a percentage-fee basis. He filed Federal Schedule "C" in order to claim his business deductions and financed his own retirement plan.

CONCLUSIONS OF LAW

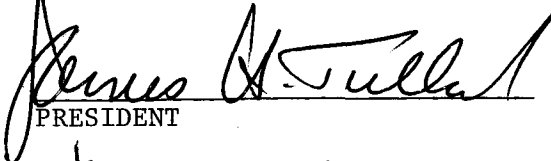
A. That although requiring special knowledge and skill, the activities of petitioner Benjamin Levy did not constitute the practice of a profession exempt from the imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of petitioner Benjamin Levy as a real estate broker, insurance consultant and public insurance adjuster during the year 1972 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law and the income derived therefrom was subject to unincorporated business tax.

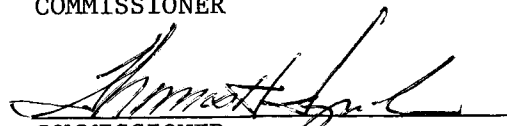
C. That the petition of Benjamin and Ann Levy is denied and the notices of deficiency issued May 19, 1975 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER