

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN AND LYNNE CLOUTIER

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~XXXXXXX~~
1967, 1968, 1969, 1970 & 1971.

AFFIDAVIT OF MAILING

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 13th day of December, 1978, she served the within

Notice of Decision by (certified) mail upon Norman and Lynne

Cloutier ~~XXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Norman and Lynne Cloutier
15 Wayside Place
Montclair, New Jersey 07042

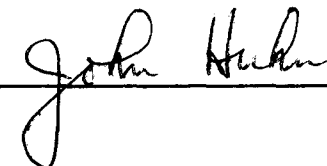
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXX~~ petitioner.

Sworn to before me this

13th day of December, 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

December 13, 1978

Norman and Lynne Cloutier
15 Wayside Place
Montclair, New Jersey 07042


Dear Mr. & Mrs. Cloutier:

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 Chyrywat
Hearing Examiner

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
NORMAN and LYNNE CLOUTIER : 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 Years 1967, 1968, 1969, 1970 and :
1971. :

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 January 10, 1978 at 10:45 A.M. Petitioner Norman Cloutier appeared pro se and for his wife, petitioner Lynne Cloutier. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

I. Whether petitioner Norman Cloutier's activities from 1967 through 1971 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(a) of the Tax Law.

II. Whether the activities of petitioner during said years constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

III. Whether penalties imposed pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law were properly asserted against petitioners.

FINDINGS OF FACT

1. Petitioners, Norman and Lynne Cloutier, timely filed New York State nonresident personal income tax returns for 1967 through 1971. Unincorporated business tax returns were not filed by petitioners for said years.

2. The Income Tax Bureau contended that the activities of petitioner Norman Cloutier during 1967, 1968, 1969 and 1971 constituted the carrying on of an unincorporated business. On February 25, 1974, it issued a Notice of Deficiency, asserting personal income and unincorporated business taxes of \$3,236.79 and \$1,825.47, respectively, plus penalty of \$618.65 and interest of \$962.69 for a total of \$6,643.60. Unincorporated business tax for 1970 is not at issue. The other adjustments made to petitioner Norman Cloutier's personal income tax returns and the allocation of business income are not at issue.

3. Petitioner Norman Cloutier graduated from Boston University with a Bachelor of Fine Arts degree and with a major in interior design. He worked for two design companies and then started his own

business in New York in 1967. His work involved office planning and design. The services he performed for clients included the following: examining and negotiating leases; preparing feasibility studies and evaluating building locations and office space; specifying interior building materials, designing and detailing interior office space; coordinating building trades for the purpose of expediting work to meet a predetermined lease date; selecting lighting, wall finishes, partitioning and furnishings and also moving the client into his new office.

4. Petitioner Norman Cloutier was retained by commercial clients and was compensated on an hourly basis or on a fee arrangement. At times petitioner utilized the services of engineers, architects and consultants to handle matters such as air conditioning, acoustics, safety and structure.

5. Petitioner Norman Cloutier was advised by his accountant that he was engaged in the practice of a profession and, therefore, was not subject to unincorporated business tax.

CONCLUSIONS OF LAW

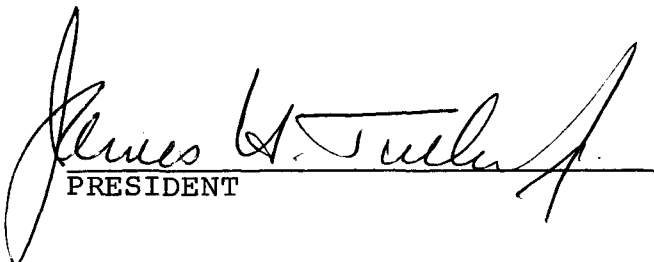
A. That petitioner Norman Cloutier was engaged in the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703(a) of the Tax Law. His activities did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

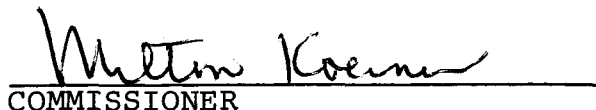
B. That petitioner Norman Cloutier acted in good faith; therefore, the penalties asserted against him pursuant to sections 685(a) and 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.

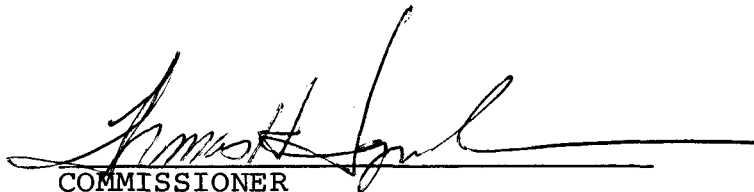
C. That the petition of Norman and Lynne Cloutier is granted to the extent that the penalties imposed pursuant to section 685(a) of the Tax Law are cancelled; that the Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued February 25, 1974 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER