

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Ronald D. Dixon
and Helen W. Dixon

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of Personal Income
& UBT under Article 22 & 23 of the Tax Law for the
Year 1976.

State of New York
County of Albany

Jay Vredenburg, 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 17th day of September, 1982, he served the within notice of Decision by certified mail upon Ronald D. Dixon and Helen W. Dixon, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald D. Dixon
and Helen W. Dixon
RD #1
Schaghticoke, NY 12154

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of September, 1982.

Constance R. Hagelund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 207

J. J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Ronald D. Dixon :
and Helen W. Dixon :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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& UBT under Article 22 & 23 of the Tax Law for the :
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State of New York
County of Albany

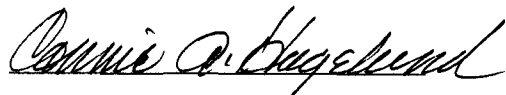
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of September, 1982, he served the within notice of Decision by certified mail upon Richard V. D'Alessandro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210

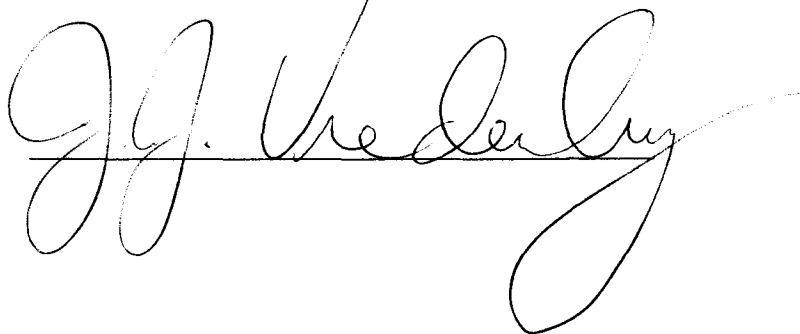
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
17th day of September, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 1117



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

September 17, 1982

Ronald D. Dixon
and Helen W. Dixon
RD #1
Schaghticoke, NY 12154

Dear Mr. & Mrs. Dixon:

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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| RONALD D. DIXSON and HELEN W. DIXSON | : | 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 1976. | : | |

Petitioners, Ronald D. Dixon and Helen W. Dixon, RD#1, Schaghticoke, New York 12154, 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 year 1976 (File No. 29557).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on May 1, 1981 at 2:45 P.M. Petitioner Ronald D. Dixon appeared with Richard V. D'Alessandro Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities in the practice of accountancy is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Ronald D. Dixon and Helen W. Dixon, timely filed a New York State Income Tax Resident Return for 1976. During 1976, petitioner Ronald D. Dixon was engaged in a limited farming operation, he also was an insurance sales representative and additionally he performed accounting services. He

reported gross income of \$15,582.64 from his accounting services. Petitioners did not file unincorporated business tax return for said years.

2. The Audit Division issued a Statement of Audit Changes to the petitioners, on the grounds that a mathematical error was made on petitioners' personal income tax return and that petitioner Ronald D. Dixon's business activities of farming, accounting and insurance were subject to unincorporated business tax. On January 30, 1980, the Audit Division issued a Notice of Deficiency against the petitioners for the year 1976 for \$14.01 in personal income tax, \$425.44 in unincorporated business tax, plus penalty and interest of \$309.21.

3. Petitioner Ronald D. Dixon argued that he was engaged in the practice of the profession of accounting, and that income derived therefrom was not subject to unincorporated business tax. The petitioners conceded the personal income tax and the unincorporated business tax on the farming and insurance business activities.

4. Petitioner Ronald D. Dixon received a diploma in 1959 from Albany Business College in Albany, New York, majoring in accounting. He studied and completed the following courses, among others:

| <u>Course</u> | <u>Grade</u> |
|-----------------------------------|--------------|
| <u>Accounting Courses</u> | |
| Elementary Accounting | 99 |
| Partnership Accounting | 96 |
| Corporation Accounting | 94 |
| Cost Accounting | 100 |
| Advance Accounting | 99 |
| Income Taxes | 94 |
| Auditing | 94 |
| Total Credit Hours in Accounting: | <u>24</u> |
| <u>Law</u> | |
| Business Law | 92 |
| Business Law | 91 |

| | |
|-------------------------------------|----------|
| Business Law | 94 |
| Business Law | 92 |
| Total Credit Hours in Business Law: | <u>8</u> |
| <u>Finance</u> | |
| Economics | 95 |
| Investments | 85 |
| Credit and Collections | 93 |
| Total Credit Hours in Finance: | <u>9</u> |
| <u>Statistics</u> | |
| Research and Statistics | 78 |
| Total Credit Hours in Statistics: | <u>3</u> |

5. Following his graduation, petitioner Ronald D. Dixon was employed by Stevens and Thompson Paper Company in Greenwich, New York as:

(a) a data processing operator and assistant plant accountant from 1959 to 1961;

(b) plant accountant and treasurer from 1961 to 1973.

During this period, he was in charge of all of his employers accounting operations, including but not limited to the maintenance and preparation of the accounting books of original entry, general and subsidiary ledgers; and the preparation of financial statements for management.

In September, 1973, petitioner Ronald D. Dixon became the manager of the Chemical Bank - Eastern, N.A., in Greenwich, New York and was responsible for all of its accounting functions. He was in charge of the banks accounting system and its books and ledgers. He prepared financial statements for the bank and reviewed in depth, financial statements of the bank's customers.

6. In November, 1974, petitioner Ronald D. Dixon opened his own accounting practice in Schaghticoke, New York. During 1976, he provided accounting services to more than one hundred (100) clients, both corporate and individuals

in and around the Schaghticoke area, most of whom were small businesses.

During 1976, he provided the following accounting services for his clients:

- (a) supervise the functioning and operation of his clients' accounting systems;

- (b) collect and record financial information in the clients books of original entry, and ledger accounts;

- (c) analyze and classify financial data;

- (d) prepare trial balances of the general ledger and compare subsidiary ledgers to control accounts;

- (e) prepare adjustments for such matters as depreciation, accruals and others;

- (f) prepare periodic balance sheets, statements of income and other financial reports showing the results of business operations and the financial position of the business;

- (g) audit financial statements, test check inventories, other accounts and accounting records;

- (h) prepare periodic tax reports, as an incident of his accounting function.

7. The accounting services that petitioner Ronald D. Dixon provided his clients during 1976 did not differ from those provided by a certified or public accountant other than he did not express an opinion on financial statements.

8. Petitioner Ronald D. Dixon did not use the word "accountant" to describe his activities on his tax return because he did not have a license from the New York State Education Department.

9. More than 80 percent of his income in question was derived from personal services and capital was not a material income-producing factor.

CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law provides "[T]he practice of law, medicine, dentistry or architecture, and the practice of any other profession ... shall not be deemed an unincorporated business".

Section 20NYCRR 203.11(b)(1)(i) defines "other profession" as:

(1) For purposes of this subdivision, the term other profession includes any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding or teaching them, an in serving their interests or welfare in the practice of an art or science founded on it. The word profession implies attainments in professional knowledge as distinguished from mere skill and the application of knowledge to uses for others as a vocation. The performing of services dealing with the conduct of business itself, including the promotion of sales or services of such business and consulting services, does not constitute the practice of a profession even though the services involve the application of a specialized knowledge.

B. That the State Tax Commission presently chooses to recognize the following licensed occupations or vocations under the Education Law;

- (a) Public accountancy;
- (b) Certified shorthand reporting;
- (c) Chiropody and podiatry;
- (d) Chiropractic;
- (e) Dental hygiene;
- (f) Professional engineering and land surveying;
- (g) Nursing;
- (h) Optometry (ophthalmic dispensing);
- (i) Osteopathy;
- (j) Pharmacy;
- (k) Physiotherapy;
- (l) Certified social work;
- (m) Veterinary medicine and surgery;
- (n) Psychology;
- (o) Landscape architecture;
- (p) Teaching.

as a profession, however this does not in itself make similar occupations or vocations a "profession" within the intent and meaning of section 703(c) of the Tax Law.

C. That the courts have listed factors which should be taken into consideration in determining whether certain activities constitute the practice of a profession (Matter of Rosenbloom v. State Tax Commission, 44 A.D. 2d 69, mot. for lv. to app. den., 34 N.Y.2d 518). Even more recently, the courts have concluded that to be entitled to an exemption under this statute, in addition to the factors listed in Rosenbloom, the services performed must involve something more than the type of services generally performed by those in the broader categories of a trade, business or occupation. It has been held that to be entitled to a "professional" exemption, the services performed must "encompass some of the essential characteristics" of the professions of law, medicine, dentistry or architecture and any other profession in which capital is not a material income-producing factor and in which more than 80 per centum of the unincorporated business gross income is derived from personal services (Section 703(c) of the Tax Law) including such other professions now recognized (20 NYCRR 203.11(b)(1)(ii); see also Conclusion of Law "B" *supra*). (Matter of Koner v. Prococcino, 45 AD 2d 551, 553, *affd.* 39 NY 2d 258).

D. That petitioner's education and prior work experience as enumerated in the Findings of fact supra, enabled him to perform his activities as an accountant at a level which involved a high degree of skill and ability. Accordingly, petitioner's activities in the practice of accounting did constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law and 20 NYCRR 203.11.

E. That petitioner Ronald D. Dixon's activities during the year 1976 in accountancy constituted a profession within the meaning and intent of section 703(c) of the Tax Law and, as such, his income derived therefrom is not subject to the imposition of unincorporated business tax.

F. That the Audit Division is directed to modify the Notice of Deficiency dated January 30, 1980 in accordance with Conclusion of Law "E" supra and that except as so granted the petition of Ronald D. Dixon and Helen W. Dixon is denied and the deficiency as modified is sustained together with such penalties and interest as may be lawfully due.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 17 1982

A. J. J. J.
Robert W. Koenig

ACTING

PRESIDENT

Francis R. Koenig

COMMISSIONER

W. J. J. J.
COMMISSIONER