

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Harvey B. Rosenbloom

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 :  
Years 1967 - 1973. :

State of New York  
County of Albany

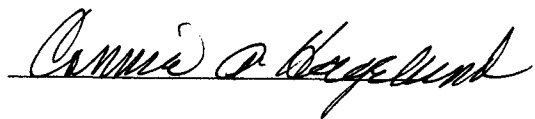
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Harvey B. Rosenbloom, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

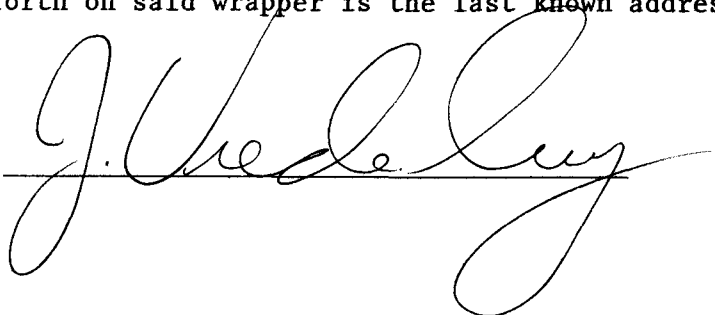
Harvey B. Rosenbloom  
96 Dartmouth St.  
Rochester, NY 14607

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  
23rd day of April, 1982.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Harvey B. Rosenbloom :  
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 :  
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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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Michael A. Rosenbloom the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

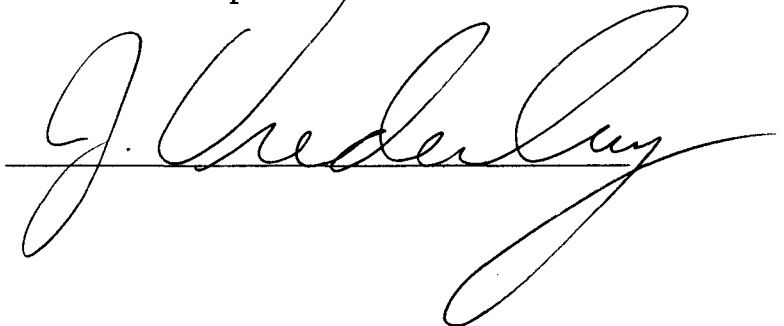
Michael A. Rosenbloom  
Levy, Feldman & Licata  
45 Exchange St., Times Square Bldg.  
Rochester, NY 14614

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  
23rd day of April, 1982.





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

April 23, 1982

Harvey B. Rosenbloom  
96 Dartmouth St.  
Rochester, NY 14607

Dear Mr. Rosenbloom:

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  
Michael A. Rosenbloom  
Levy, Feldman & Licata  
45 Exchange St., Times Square Bldg.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
HARVEY B. ROSENBLOOM	:	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 through 1973.	:	

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Petitioner, Harvey B. Rosenbloom, 96 Dartmouth Street, Rochester, New York 14607, filed petitions 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 through 1973 (File No. 12342).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on October 21, 1980 at 1:15 P.M. Petitioner, Harvey B. Rosenbloom, appeared with Michael A. Rosenbloom. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a consultant and real estate appraiser constituted the practice of a profession exempt from the imposition of unincorporated business tax.

II. Whether petitioner was entitled to a deduction for the reasonable value of services rendered by his spouse, thereby permitting him to reduce his unincorporated business tax for all years at issue and his personal income tax for 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, Harvey B. Rosenbloom, timely filed joint New York State income tax resident returns for 1967 through 1971 with his wife, Ethel L. Rosenbloom. For 1972 and 1973, petitioner, Harvey B. Rosenbloom, timely filed New York State combined income tax returns with his wife, Ethel L. Rosenbloom. On all said returns, he reported his business activities as a consultant and real estate appraiser. Petitioner did not file unincorporated business tax returns for said years.

2. On July 28, 1975, the Income Tax Bureau issued two notices of deficiency against petitioner for the years 1967 through 1970 and 1971 through 1973 respectively, whereby it held "that based on the decision of the State Tax Commission dated February 27, 1973, for tax years 1964, 1965 and 1966, your business activities are held to constitute the carrying on of an unincorporated business and the income derived is subject to unincorporated business tax." Adjustments were also made to the petitioner's personal income tax return for 1972 (pursuant to sections 611(b)(11) and 615(c)(4) of the Tax Law), said adjustments are not at issue. Accordingly, the notices imposed unincorporated business tax of \$2,931.35 and additional personal income tax of \$427.95, plus interest of \$739.19, for a total due of \$4,098.49.

3. On October 23, 1975, the petitioner filed petitions for redetermination of the notices of deficiency. Petitioner contended the business income reported on notices for each year does not accurately reflect his business income. That in 1967 interest income of \$5,094.62, short-term installment gain of \$75.50 and rental income of \$1,139.77 should be excluded from the business income reported. There should also be excluded for 1967 and all other years at issue the following

amounts attributable to service of the petitioner's spouse who functions as a full-time secretary-bookkeeper and administrative assistant:

1967 - \$5,000.00	1971 - \$6,000.00
1968 - 5,500.00	1972 - 6,800.00
1969 - 5,500.00	1973 - 7,200.00
1970 - 5,500.00	

4. On March 29, 1976, the petitioner filed an amended New York State Combined Income Tax Return for 1972 with his wife, Ethel L. Rosenbloom. On said return, petitioner reduced his business income by \$6,800.00 and Ethel L. Rosenbloom increased her taxable income under wages by \$6,800.00. Interest income was redistributed by diminishing the amount originally reported by the petitioner and augmenting the amount reported by Ethel L. Rosenbloom by \$4,652.95. The other adjustments on this amended return reflected the adjustments made on the Notice of Deficiency for personal income tax for 1972.

5. On April 1, 1977, the petitioner filed an amended New York State Combined Income Tax Return for 1973 with his wife, Ethel L. Rosenbloom. On said return, petitioner reduced his business income by \$7,200.00 and Ethel L. Rosenbloom increased her taxable income under wages by \$7,200.00. Interest income was decreased by \$1,375.64, originally reported by the petitioner and increased by Ethel L. Rosenbloom by \$1,330.83.

6. At the hearing, the Audit Division conceded that for 1967 the interest income of \$5,094.62, short-term installment gain of \$75.50 and rental income of \$1,139.77 should be excluded from the business income reported of \$15,688.19. The Audit Division also conceded all adjustments on the amended returns for 1972 and 1973 other than the wife's wages.

7. In the conduct of his business, petitioner utilized the service of Ethel L. Rosenbloom, his wife, who performed the bookkeeping, clerical and secretarial duties of the business. She was not paid any compensation for the time and services she rendered, nor was she listed as an employee on any payroll records.

8. Petitioner holds a B.S. degree in economics from the University of Illinois and continued his education on the graduate level at the University of Rochester. Petitioner's formal education has included courses in accounting, financing, statistics, business law and real estate law. Petitioner maintains a library and has pursued independent study in the real estate appraisal field.

9. In 1948, when the petitioner earned his degree from the University of Illinois, there were no degrees in appraising, but now there are baccalaureate and masters degrees with a major area of specialization in appraising offered in universities and colleges.

10. The petitioner was licensed as a real estate salesman in 1939. In 1942, he was licensed as a real estate broker. In 1950, his endeavors changed from general real estate to appraisal work and during the years in question entirely all of his activities were in the appraisal field. Though the petitioner holds his license in real estate during the years at issue, there is no license required in New York State for appraisers. In June 1971, the American Society of Appraisers adopted a resolution unanimously supporting the licensing and certification of all appraisers, in order to better protect the public.

11. Petitioner is a senior member of the American Society of Appraisers which requires an examination not unlike that required in Law, Medicine and

Accounting. However, now each senior member of the American Society of Appraisers is required to submit evidence of professional growth through continuing education and/or participation in professional activities each five years from the date of certification to remain a certified member of the society.

12. As a member of the American Society of Appraisers, the petitioner is controlled by standards of conduct and ethics as prescribed by the society in their principles of appraisal practice and code of ethics. However, no governmental body within New York State requires appraisers to be a member of the American Society of Appraisers.

13. Petitioner has performed appraisal assignment for political subdivisions, authorities and agencies, among others. Petitioner has testified before courts and court-appointed commissions. Petitioner's appraisals have aided courts in determining their determinations. Petitioner's consultant activities were comprised of advising his clients in the field of real estate appraisals and not in the conduct of business itself.

14. Petitioner argued that the State Tax Commission decision in the Matter of Harvey B. Rosenbloom dated February 27, 1973 which culminated in the Matter of Rosenbloom v. State Tax Commission, 353 N.Y.S.2d 544 should not be used in this determination because the proof adduced at this hearing is considerably different from the proof adduced at the prior hearing where petitioner appeared pro se.

15. The petitioner's activities for the years at issue had not changed from the years at issue in the Matter of Harvey B. Rosenbloom, 44 A.D.2d 69.

#### CONCLUSIONS OF LAW

A. 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, 353 N.Y.S.2d 544). Even more recently, the court has 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 (Matter of Koner v. Procaccino, 45 A.D.2d 551, 553, affd. 39 N.Y.2d 258). That the petitioner Harvey B. Rosenbloom has failed to present any evidence to establish that he meets all of the above requisites. Petitioner has thus failed to sustain the burden of showing that his activities as consultant and real estate appraiser did not constitute the carrying on of an unincorporated business within the meaning of section 703(a) of the Tax Law.

B. That there is no doubt that the work of Ethel L. Rosenbloom was helpful to Harvey B. Rosenbloom. However, in order to secure a deduction for employee salary, a certain amount of compliance with everyday business practice is required. The evidence of bona fide employment or the sharing of property by a married couple as opposed to a joint venture is not convincing. Additionally, the failure to pay or deduct for unemployment insurance, workmen's compensation, disability benefits, Federal and State withholding of income tax indicate that there was no employment.

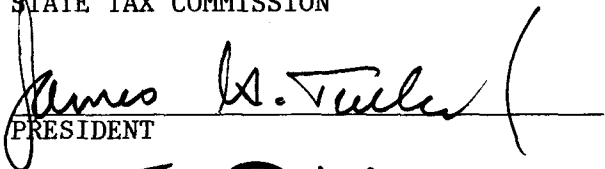
C. That the Audit Division is directed to recompute the amended personal income tax returns for 1972 and 1973 and modify the notices of deficiency dated

July 28, 1975 in accordance with Findings of Fact "6" so as to be consistent with the decision rendered herein; and that, except as so granted, the petitions of Harvey B. Rosenbloom are in all other respects denied.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER