

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Martin K. Starr

:

:

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 1971, 1972 & 1973.

State of New York
County of Albany

Connie Hagelund, 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 9th day of April, 1982, she served the within notice of Decision by certified mail upon Martin K. Starr, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin K. Starr
512 TT Peconic Crescent
Hampton Bays, NY 11946

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
9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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& UBT under Article 22 & 23 of the Tax Law for the:
Years 1971, 1972 & 1973.

State of New York
County of Albany

Connie Hagelund, 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 9th day of April, 1982, she served the within notice of Decision by certified mail upon Aaron Shapiro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Aaron Shapiro
Shapiro, Taxon & Kopell
1180 Avenue of the Americas
New York, NY 10036

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
9th day of April, 1982.

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

April 9, 1982

Martin K. Starr
512 TT Peconic Crescent
Hampton Bays, NY 11946

Dear Mr. Starr:

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) 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
Aaron Shapiro
Shapiro, Taxon & Kopell
1180 Avenue of the Americas
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MARTIN K. STARR
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1973.

DECISION

Petitioner, Martin K. Starr, 512 TT Peconic Crescent, Hampton Bays, New York 11946, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1973 (File No. 19220).

The petitioner waived a formal hearing and submitted the case to the Commission for a decision based on the record contained in the file.

ISSUE

Whether petitioner's writing of books constitutes the practice of a profession under section 703(c) of the Tax Law and is thus not deemed to be an unincorporated business.

FINDINGS OF FACT

1. A Notice of Deficiency was issued against petitioner, Martin K. Starr, on March 28, 1977 for personal income tax under Article 22 of the Tax Law for the year 1971 in the amount of \$130.90, plus interest of \$38.89, for a total of \$169.79 and for unincorporated business tax under Article 23 of the Tax Law for the year 1973 in the amount of \$392.08, plus interest of \$89.26, for a total of \$481.34. The total deficiency for personal income and unincorporated business tax is in the amount of \$522.98, plus interest of \$128.15, for a grand total of

\$651.13. The petition filed in this matter made no reference to the personal income tax portion of the deficiency and is deemed not to be at issue.

2. Mr. Starr holds a Master's Degree in Engineering and a Doctorate in Operations Management. He is a member of the Operations Research Society of America. He is also President and editor-in-chief of "TIMS" (The Institute of Management Sciences). He describes himself in his tax returns as a "consultant". He is not a licensed professional engineer.

3. Mr. Starr filed a personal income tax return for 1973 but did not file an unincorporated business tax return.

4. (a) Mr. Starr received salary income from the Trustees of Columbia University, New York, New York, and from the Star Registry for Nurses, Inc. of Brooklyn, New York.

(b) In addition, Mr. Starr engaged in consulting work and had gross receipts from this in 1973 of \$22,514.00. Business expenses amounted to \$22,422.00 which expenses he claims were related solely to the consulting income. Thus his net income from those activities amounts to \$92.00. Mr. Starr now admits that such activities constitute a business and are not exempt from unincorporated business tax.

(c) Mr. Starr received \$15,069.20 in royalties on books written by him. (These were \$4,732.20 from Harcourt, Bruce, Javonovich, Inc. and \$10,337.00 from Prentice-Hall, Inc.) There is no information in the record concerning the subjects or titles of these books. The royalties were reported by him originally on Schedule C of his Federal income tax return, together with his consulting income of \$22,514.00 and expenses of \$22,422.00, for a net amount of \$15,161.20.

CONCLUSIONS OF LAW

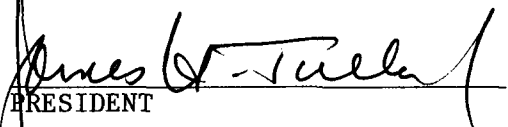
A. That as a general rule, the activities of an author in writing books constitutes the practice of a profession unless the books are written to promote a business or sell a product. Petitioner Martin K. Starr has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the books written by him did not promote business or the sale of a product. Accordingly, this activity is not considered the practice of a profession and the income derived therefrom is subject to unincorporated business tax.

B. That the petition of Martin K. Starr is denied and the Notice of Deficiency is sustained together with such interest lawfully due.

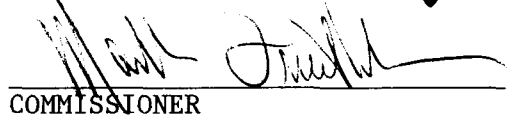
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER