

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leo & Muriel Wanderman : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income & :
UBT under Article 22 & 23 of the Tax Law for the :
Years 1969 - 1971. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Leo & Muriel Wanderman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

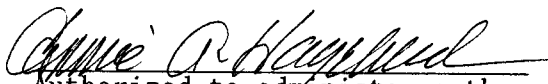
Leo & Muriel Wanderman
69-37 Utopia Pkwy.
Flushing, NY 11365

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 August, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

August 9, 1984

Leo & Muriel Wanderman
69-37 Utopia Pkwy.
Flushing, NY 11365

Dear Mr. & Mrs. Wanderman:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEO WANDERMAN and MURIEL WANDERMAN	:	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 1969, 1970 and 1971.	:	

Petitioners, Leo Wanderman and Muriel Wanderman, 69-37 Utopia Parkway, Flushing, New York 11365, 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 years 1969, 1970 and 1971 (File No. 39850).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 12, 1984 at 10:45 A.M., with all briefs to be submitted by March 12, 1984. Petitioners appeared with William I. Shore, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUES

I. Whether the income derived by petitioner Muriel Wanderman from the American Home Sewing Council, Inc. was from the practice of the profession of law and accordingly exempt from the imposition of unincorporated business tax, or from activities engaged in as a publicity agent.

II. Whether the Notice of Deficiency was barred by the three-year statute of limitations.

FINDINGS OF FACT

1. Leo Wanderman and Muriel Wanderman filed a joint New York State Income Tax Resident Return for each of the years 1969, 1970 and 1971. On such returns Muriel Wanderman (hereinafter petitioner) variously reported her occupation as "publicity agent" (1969), "publicity and attorney" (1970) and "publicity agent" (1971). Leo Wanderman reported his occupation each year as "salesman". The income derived from petitioner's activities was reported each year as business income. On page 2 of the 1970 return, the type of business petitioner was engaged in was reported as "public relations". No designation was reported for type of business on the 1969 and 1971 returns. Petitioner did not file unincorporated business tax returns for the years at issue herein.

2. Petitioner filed Federal schedules C for the years at issue wherein the following was reported:

<u>YEAR</u>	<u>BUSINESS NAME</u>	<u>BUSINESS ADDRESS</u>	<u>PRINCIPAL BUSINESS ACTIVITY</u>	<u>NET PROFIT (OR LOSS)</u>
1969	Muriel Wanderman	None Listed	Lawyer	\$ 130.00
1969	Wanderman Associates	None Listed	Public Relations	\$ 13,165.38
1970	Wanderman Associates	475 5th Ave., NY, NY 10017	Public Relations	\$ 13,769.62
1971	Muriel Wanderman	69-37 Utopia Pky. Flushing NY	Law	\$(2,132.76)
1971	Wanderman Associates	475 5th Ave., NY, NY 10017	Public Relations	\$30,133.42

3. On August 20, 1974 the Audit Division issued a Statement of Audit Changes to petitioner wherein the net income derived from her reported "public relations" activities was held subject to the unincorporated business tax for each year at issue. Said determination was based solely on the information reported on petitioner's New York State returns and Federal schedules C. An audit of petitioner's books and records was not conducted.

4. On August 18, 1982 the Audit Division issued a Notice of Deficiency against petitioner and her husband asserting unincorporated business tax for the years 1969, 1970 and 1971 of \$1,708.31, penalties of \$825.54, plus interest

of \$1,245.69, for a total due of \$3,779.54. Said penalties were asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law for failure to timely file the 1971 personal income tax return, failure to timely pay the tax determined to be due thereon and failure to file 1970 and 1971 declarations of estimated personal income tax, respectively.

5. Petitioner contested the penalties asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law. She claimed that her 1971 return, which bears a signature date of April 15, 1972, was timely filed. Inspection of said return shows a machine stamped received date of February 9, 1973. A copy of petitioner's 1971 U.S. Individual Income Tax Return bears a machine stamped received date of February 8, 1973. Said return was also signed April 15, 1972. Petitioner's 1969 return was timely filed. Her 1970 return was filed July 19, 1971.

6. Prior to 1968 petitioner was engaged in public relations activities under the name of Wanderman Associates. Her business office was located at 475 Fifth Avenue, New York City.

7. In 1968 petitioner was admitted to the bar of the State of New York and began to practice as an attorney.

8. The net income reported for Wanderman Associates each year at issue, from "public relations" activities, was derived solely from one client, the American Fashion Home Sewing Council, Inc. (AFHSC).

9. Petitioner alleged that all services rendered for AFHSC were of a legal nature in her capacity as an attorney. She claimed that no public relations services were rendered for AFHSC during the years at issue herein. As such, she alleged that the income derived from AFHSC is exempt from the

imposition of unincorporated business tax pursuant to section 703(c) of the Tax Law.

10. Petitioner testified that her brother erroneously prepared her tax returns for the years at issue. Instead of reporting all of her income as being from the practice of law, he separated her income into two categories: that from the practice of law and that from "public relations". She contended that although she was engaged in the practice of law for AFHSC, her brother erroneously designated her activities as "public relations" since AFHSC was a public relations firm.

11. Petitioner contended that her activities for AFHSC consisted primarily of drawing up contracts between AFHSC and various individuals who exhibited in its shows. She claimed her activities for AFHSC also consisted of negotiating labor relations and providing legal counsel and advice.

12. Petitioner testified that she commenced her relationship with AFHSC in 1968, after becoming an attorney. She incorporated AFHSC in February, 1971. Pursuant to the Certificate of Incorporation, the purposes for which the corporation was formed were as follows:

"(a) To unite into one group manufacturers of the home sewing industry for their mutual benefit, protection and advantage; to promote the welfare and interests of its members by interchange of ideas and dissemination of information relating to the home sewing industry; to strengthen fraternal and social relations among its members;

(b) to promote the home sewing industry by running trade shows, exhibitions, seminars, meetings, conferences, conventions and other activities of a similar nature, and by doing whatever necessary to run these activities; to further the home sewing industry by publicity, advertising and promotional aids; and, in general, to promote and further the cause of the home sewing industry in whatever way it can better and improve the home sewing industry, within the confines of the Not-For-Profit Corp. Law and all other applicable New York law and Federal law."

13. Petitioner alleged that her services were rendered for AFHSC under a contract; however, a copy of such contract was not submitted into evidence.

14. Petitioner did not keep a diary or day book wherein her daily activities on behalf of AFHSC would have been recorded. No documentation was submitted from AFHSC to establish the nature of her activities.

15. Petitioner's Federal schedules C filed for "Wanderman Associates", which report the income and expenses attributable to her services for AFHSC, list, inter alia, the following deductions:

<u>YEAR</u>	<u>DEDUCTION</u>	<u>AMOUNT CLAIMED</u>
1969	Trade Show Expenses	\$1,533.67
1969	Show Hall Rental	\$ 570.00
1970	Show Expense	\$8,750.75
1971	Show Expense	\$2,733.36
1971	Badges	\$ 68.48
1971	Guards	\$ 100.00
1971	Show Food	\$ 308.97

16. The business address listed on petitioner's Federal schedules C, wherein she reported her income and deductions attributable to her "law" practice, was that of her personal residence. In such practice petitioner handled legal matters in the areas of wills, estates and real estate. The income derived from these activities was not held subject to the unincorporated business tax.

17. Petitioner's business office at 475 Fifth Avenue, New York City, which was used for her public relations activities prior to 1968 (see Finding of Fact "6", supra), continued to be used by petitioner during the years at issue for her activities engaged in on behalf of AFHSC.

18. In early 1972, petitioner's relationship with AFHSC terminated. Her files were transferred to her successor, who also happened to be an attorney.

19. Petitioner alleged that the period for assessment of unincorporated business tax had expired. Although unincorporated business tax returns were

not filed for the years at issue herein, she alleged that her "books and records were audited by the Tax Commission on July 9, 1975" and that, "An audit by the Commission of the taxpayer's books and records relating to the unincorporated business tax for 1969, 1970 and 1971 is equivalent to filing form 202" (unincorporated business tax return).

20. Leo Wanderman was not involved in petitioner's activities engaged in on behalf of AFHSC.

CONCLUSIONS OF LAW

A. That during the years at issue section 703(c) of the Tax Law provided in part that, "(t)he practice of law, medicine, dentistry or architecture... shall not be deemed an unincorporated business."

B. That petitioner has failed to sustain her burden of proof, imposed pursuant to section 689(e), as incorporated into Article 23 by section 722(a) of the Tax Law, to show that all of her activities engaged in for AFHSC, which were reported on her returns as "public relations" activities, constituted the practice of the profession of law.

C. That the nature of petitioner's business deductions claimed with respect to her activities engaged in on behalf of AFHSC indicates that at least part of her activities for AFHSC were carried on as a publicity agent. (See Finding of Fact "15", supra). Since no breakdown was furnished separating petitioner's income and deductions attributable to her public relations activities engaged in on behalf of AFHSC from her activities for AFHSC constituting the practice of law, exemption under section 703(c) of the Tax Law cannot be granted. Accordingly, all of petitioner's activities for AFHSC are deemed to constitute the carrying on of an unincorporated business and as such, the

income derived therefrom is subject to the imposition of unincorporated business tax.

D. That section 683(a) of the Tax Law provides in part that, "(e)xcept as otherwise provided in this section, any tax under this article shall be assessed within three years after the return was filed...".

E. That section 683(c)(1), as incorporated into Article 23 by section 722(a) of the Tax Law provides that, "(t)he tax may be assessed at any time if - (A) no return is filed...".

F. That petitioner's argument that an audit allegedly conducted in 1975 constituted the filing of unincorporated business tax returns, thereby resulting in the expiration of the statute of limitations, is without merit.

G. That the penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax law, with respect to personal income tax, are hereby abated since such penalties were asserted subsequent to the expiration of the period for assessment of personal income tax pursuant to section 683(a) of the Tax Law.

H. That the name of Leo Wanderman is to be removed from the Notice of Deficiency.

I. That the petition of Leo Wanderman and Muriel Wanderman is granted to the extent provided in Conclusions of Law "G" and "H" supra, and except as so granted, said petition is in all other respects denied.

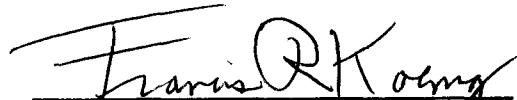
J. That the Audit Division is hereby directed to modify the Notice of Deficiency dated August 18, 1982 to be consistent with the decision rendered herein.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER