

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

April 15, 1985

George T. & Gwendolyn J. Acsadi
555 Main St., #S-712
Roosevelt Island, NY 10044

Dear Mr. & Mrs. Acsadi:

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 :
GEORGE T. ACSADI AND GWENDOLYN J. ACSADI : 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 1978 and 1979. :

Petitioners, George T. Acsadi and Gwendolyn J. Acsadi, 555 Main Street, #S-712, Roosevelt Island, New York 10044, 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 1978 and 1979 (File No. 37890).

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 August 20, 1984 at 2:45 P.M., with all briefs to be submitted by September 20, 1984. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner George T. Acsadi's activities as a demography consultant constituted the practice of a profession, the income of which is exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, George T. Acsadi and Gwendolyn J. Acsadi, timely filed a New York State Income Tax Resident Return for each of the years 1978 and 1979 under filing status "married filing separately on one return". On each return

George T. Acsadi (hereinafter "petitioner") reported business income derived from his activities as a "consultant".

2. For taxable year 1978, petitioner submitted an unincorporated business tax return marked "erroneously completed". Attached thereto was an explanatory letter which stated, in pertinent part, that:

"The preparer erroneously calculated NY State Unincorporated Business Tax for me to which I am not subject. According to the Instructions for State Form IT-202, the unincorporated business tax does not apply to my income, which was received by me from the practice of profession...

For the above reason the completed copy of IT-202 is void and is submitted only for explanation of the corrections."

Petitioner did not file an unincorporated business tax return for taxable year 1979.

3. On June 11, 1981, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's reported business income was held subject to unincorporated business tax for each year at issue on the basis that his "status in his position with the United Nations is that of an independent contractor". Additionally, Gwendolyn J. Acsadi's 1978 personal income tax liability was recomputed as the result of an error made in computing her maximum tax on personal service income.

4. On July 6, 1981, Gwendolyn J. Acsadi submitted a check for \$839.53 in payment of her additional personal income tax liability for 1978 of \$730.26 plus her proportionate share of interest of \$109.27.

5. On April 7, 1982, the Audit Division issued two notices of deficiency. One such notice, which was issued against Gwendolyn J. Acsadi, asserted personal income tax for 1978 of \$730.26 (which was previously paid), plus interest of \$208.77, for a total due of \$939.03. The other notice, which was issued against petitioner, asserted unincorporated business tax for 1978 and 1979 of

\$1,563.08, plus penalties of \$401.61 and interest of \$307.48, for an amount due of \$2,272.17. This amount was then inadvertently reduced by Gwendolyn J. Acsadi's payment of \$839.53, for a balance due, pursuant to said notice, of \$1,432.64. The aforesaid penalties were asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, as incorporated into Article 23 by section 722(a), for failure to file a 1979 unincorporated business tax return and failure to pay the 1978 and 1979 taxes determined to be due, respectively.

6. During the years 1978 and 1979 petitioner's business income was derived exclusively (with the exception of a lecturer's fee of \$100.00 in 1979 from the University of Pennsylvania) from the United Nations (U.N.) and its specialized agency, the World Health Organization for services rendered as a demographer. Such services were rendered as a "consultant on population" or as an "expert" demographer and included work as a writer and editor of various demography related publications.

7. Demography is the statistical study of human populations with respect to size, density, distribution, sex, age, occupation, et cetera. It is used by its practical application to both short-term and long-term planning predominantly by governmental bodies relative to the resolution of various social and economic problems. In general, petitioner, as a demographer or demography consultant, compiled statistics from data, analyzed it and made recommendations as to what actions should be taken to correct the specific problem at hand.

8. Petitioner's business income for the years 1978 and 1979 originated from the following assignments and projects:

- a - January to March 1978 - U.N. Office of Technical Co - operation: Consultant on Population to the U.N. Cairo Demographic Centre (graduate student training and demographic research).

- b - April to August 1978 - U.N. Fund for Population Activities: Consultant to the Executive Director of said fund (comparative analysis of World Fertility Survey data).
- c - September and December 1978 - Consultant of Population to the U.N. Cairo Demographic Centre under status "Expert on Mission".
- d - 1978 and 1979 - World Health Organization, Geneva, Switzerland: Analysis of health and demographic conditions in Sierra Leone, report writing and editing.
- e - November, 1978, January to June 1979 - U.N. Fund for Population Activities: Consultant to the Executive Director (consulting, editing and writing, editor of African mission reports for population assistance).
- f - April, 1979 - University of Pennsylvania: visiting lecturer of graduate seminar.
- g - June to October 1979 - U.N. Department of International Economic and Social Affairs/Population Division: Consultant for comparative analysis of World Fertility Survey data under status "Expert on Mission".
- h - October to December 1979 - United Nations: Consultant on Population to project at U.N. Cairo Demographic Centre under status "Expert on Mission".

9. Petitioner's relationship with the U.N., as explained in a letter dated July 24, 1984 from the Acting Director of the Population Division, was as follows:

"The United Nations has established posts (for examples, Demographer, Population Affairs Officer, Director or Chief of Population Division or Section, respectively, at professional levels D-1, 2 and from P-1 to P-5, for qualified professionals trained and working in the field of demography and related population matters. The essential qualification is an advanced degree in the profession, i.e., in demography or population analysis or social sciences (sociology, economics, political sciences, public administration), etc., as well as varying amounts of professional experience...

Occasionally, when staff resources are inadequate, the United Nations engages professional demographers (such as petitioner) on a short-term basis to carry out specific assignments in their profession as consultants or experts on mission."

10. During the years at issue petitioner has authored and edited many demography related publications for the U.N. including a "Report of Mission on Needs Assessment for Population Assistance" for the countries of Sudan, Kenya, Jordan, Madagascar, Rwanda and Burundi.

11. Petitioner received a Doctorate degree in political science and law from the University of Eotvos, Budapest in 1951. The political science degree involved courses of study in demographics, statistics, sociology and economics.

12. Petitioner's employment background is as follows:

- a - Demographer for the Statistics and Demographics Department of the University of Eotvos.
- b - Post doctorate fellow in anthropology for the University of Eotvos. As such he attended excavations and wrote his first paper on the mortality and life tables of some ancient populations.
- c - Demographer for the Hugarian Central Statistical Office. During this employment he gave lectures in demography at several Hungarian universities.
- d - Visiting professor of demography at the University of Ife, Nigeria for a three year period.
- e - Demographer for the Population Consul of the Statistical Institute in New York.
- f - Independent demography consultant for the U.N., which commenced in 1976 and continued through the years at issue herein.

13. During the years at issue petitioner was a member of the Population Association of America and the International Union for the Scientific Study of Population.

14. The University of California, Berkeley, offers courses of study leading to both a Master's degree and a Doctorate's degree in demography. Many other universities provide graduate study programs in demography.

15. Pursuant to an International Union for the Scientific Study of Population Newsletter, dated February 1980, the qualifications for the post of demographer with the U.N. at level P-4 were:

"Advanced university degree in demography and mathematics, economics, sociology, statistics. Eight years' experience in demographic analysis, evaluation and demographic inquiries; practical experience in the use of computer packages; evidence of substantial work in the field of population research. A higher level degree (Ph.D. or equivalent) may be substituted for two years' professional experience. Candidates with first level university degree and at least ten years of experience may be considered."

16. Petitioner alleged that a portion of his work for the U.N. was carried on without the State of New York. However, his only regular place of business was his office maintained in his personal residence.

17. A license is not required in order to be engaged in activities as a demographer.

18. More than 80 percent of petitioner's gross income for each year at issue was derived from personal services actually rendered by him.

19. Capital was not a material income producing factor in petitioner's business.

CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law provides:

(c) Professions. -- The practice of law, medicine, dentistry or architecture, and the practice of any other profession in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal service actually rendered by the individual or the members of the partnership or other entity, shall not be deemed an unincorporated business"

B. That 20 NYCRR 203.11(b)(1)(i) provides:

"[T]he 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..."

It is evident from petitioner's educational and employment background, and the nature of the services which he rendered, that his activities were of a professional nature.

C. That 20 NYCRR 203.11(b)(1)(i) further provides:

"[T]he 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."

Petitioner's services as a demography consultant rendered to the U.N., its affiliated agency, the World Health Organization, and the University of Pennsylvania (lecture given for a fee of \$100.00 in 1979) were not services dealing with the conduct of business itself. Accordingly, the aforementioned regulation does not apply. Petitioner's income derived from his activities as a demography consultant is exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law. (See Matter of Lemont K. Richardson, State Tax Commission, May 2, 1980).

D. That the Notice of Deficiency issued April 7, 1982 against petitioner George T. Acsadi is cancelled.

E. That the Notice of Deficiency issued April 7, 1982 against Gwendolyn J. Acsadi is cancelled since said deficiency had been previously paid, although such payment had been erroneously applied against the deficiency asserted against petitioner.

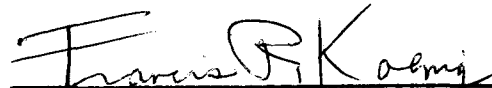
F. That the petition of George T. Acsadi and Gwendolyn J. Acsadi is granted.

DATED: Albany, New York

APR 15 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER