

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Robert B. & Ollie M. Anderson	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income &	:	
Unincorporated Business Taxes under Articles 22 &	:	
23 of the Tax Law for the Years 1961 - 1970.	:	

State of New York :

ss.:

County of Albany :

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 30th day of August, 1985, he served the within notice of Decision by certified mail upon Robert B. & Ollie M. Anderson, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert B. & Ollie M. Anderson  
535 Fifth Ave. - Suite 1004  
New York, NY 10017

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  
30th day of August, 1985.

David Parchuck

James P. Magallon  
Authorized to administer oaths  
pursuant to Tax Law section 174

## STATE TAX COMMISSION

In the Matter of the Petition  
of  
Robert B. & Ollie M. Anderson  
for Redetermination of a Deficiency or Revision  
of a Determination or Refund of Personal Income &  
Unincorporated Business Taxes under Articles 22 &  
23 of the Tax Law for the Years 1961 - 1970.

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 30th day of August, 1985, he served the within notice of Decision by certified mail upon Eli D. Schoenfield, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eli D. Schoenfield  
Kay, Collyer & Boose  
One Dag Hammarskjold Plaza  
New York, NY 10017

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 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  
30th day of August, 1985.

David Paruch

Armando A. Hagedorn  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

August 30, 1985

Robert B. & Ollie M. Anderson  
535 Fifth Ave. - Suite 1004  
New York, NY 10017

Dear Mr. & Mrs. Anderson:

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: Petitioner's Representative  
Eli D. Schoenfield  
Kay, Collyer & Boose  
One Dag Hammarskjold Plaza  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
	:	
of	:	
	:	
ROBERT B. ANDERSON and OLLIE M. ANDERSON	:	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 1961 through 1970.	:	

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Petitioners, Robert B. Anderson and Ollie M. Anderson, Khakum Wood Road, Greenwich, Connecticut 06830, 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 1961 through 1970 (File Nos. 19119 and 24050).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 7, 1984 at 9:15 A.M., with all briefs to be submitted by November 30, 1984. Petitioners appeared by Kay, Collyer & Boose, Esqs. (Arthur Kokot, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether certain fees received by petitioner Robert B. Anderson were consulting fees subject to unincorporated business tax or fees from the practice of the profession of law and thus not subject to unincorporated business tax.

II. Whether, based on federal audit changes, the Audit Division may increase the deficiency in income tax issued to petitioners.

FINDINGS OF FACT

1. Petitioners, Robert B. Anderson and Ollie M. Anderson, filed joint New York State income tax nonresident returns for the years 1961 through 1964. The address shown on the returns was One Deerpark Court, Greenwich, Connecticut. Petitioners filed New York State combined income tax returns on form IT-208 for the years 1965 through 1970. The address shown on these returns was One Rockefeller Plaza, New York, New York. On the 1961 return, Robert B. Anderson listed his occupation as "executive". On the 1962 through 1965 returns and on the 1967 return, Mr. Anderson listed his occupation as "consultant and attorney" and on the 1968, 1969 and 1970 returns, he listed his occupation as "attorney". (The 1966 form did not require the reporting of occupation.)

2. (a) On March 28, 1977, the Audit Division issued a Statement of Audit Changes to petitioner Robert B. Anderson asserting unincorporated business tax of \$28,920.03 for the years 1961 through 1968 and additional personal income tax of \$8,217.32 for the years 1965 through 1968. It also asserted penalties of \$7,230.01 under section 685(a) of the Tax Law and an addition to tax due to underestimation (for the year 1966) of \$266.08, plus interest. On the same date, a Notice of Deficiency was issued against petitioner Robert B. Anderson for said amounts.

(b) On March 28, 1977, the Audit Division also issued a Statement of Audit Changes against petitioners, Robert B. Anderson and Ollie M. Anderson, for additional personal income tax due for the years 1961 through 1964 in the amount of \$23,259.80, plus interest. On the same date, a Notice of Deficiency was issued against petitioners for said amount.

(c) On March 24, 1978, the Audit Division issued a Statement of Audit Changes against petitioners, Robert B. Anderson and Ollie M. Anderson, for

additional personal income tax of \$4,413.81 for 1969 and 1970 and unincorporated business tax of \$16,373.23 for 1969 and 1970, plus penalties under section 685(a) and (a)(2) of the Tax Law (at 47½%) of \$7,777.28 and section 685(c) (for 1970 only) of \$163.49, plus interest. On July 10, 1978, the Audit Division issued a Notice of Deficiency against petitioner Robert B. Anderson with respect to said taxes, penalties and interest.

(d) The deficiencies were the result of a field audit of petitioners which, in turn, was the consequence of a field audit of the firm of Loeb, Rhodes & Co. ("Loeb, Rhodes") and its partners. The deficiencies in income tax are based on adjustments with respect to Loeb, Rhodes' income due to Federal audit changes and are not in issue. The unincorporated business tax deficiencies are based on the determination that certain fees petitioner Robert B. Anderson received during the years at issue were for services as a consultant and thus subject to unincorporated business tax. Mr. Anderson claims that these fees were for professional services as a lawyer and therefore are not subject to unincorporated business tax.

(e) In its answer to the perfected petition, the Audit Division claimed that the deficiencies for 1969 and 1970 should be increased based on a \$78,000.00 Federal audit adjustment. This claim has been challenged by petitioners.

3. Petitioner Robert B. Anderson (hereinafter referred to as "petitioner") was born in Texas and received a law degree from the University of Texas in 1932. He was admitted to the Texas bar in 1932 and during 1933 and 1934 served as an adjunct professor of law at the University of Texas. In 1933, he was named an Assistant Attorney General of Texas and in 1934 became Texas State Tax Commissioner. Petitioner served as United States Secretary of the Navy in 1953

and 1954, Secretary of Defense from 1954 through 1956, and Secretary of the Treasury from 1957 to 1961.

In 1955, petitioner was a founding member of the New York law firm of Anderson & Roberts, now Roberts & Holland, and was admitted to the New York bar in 1957. During the years 1961 through 1970, petitioner was counsel to the firm of Roberts & Holland and also practiced under his own name with an office at Rockefeller Plaza, New York City. Petitioner has been a member of the American Bar Association from 1953 to the present and a member of the Association of the Bar of the City of New York from 1957 to the present.

4. Upon leaving office as Secretary of the Treasury, petitioner met with the then Attorney General, Robert F. Kennedy, to discuss the procedures that petitioner should follow in future dealings with various companies in order to avoid a conflict of interest under Federal statutes. Mr. Kennedy advised petitioner to conduct his activities as a lawyer.

5. The unincorporated business tax deficiencies are based on income from services rendered to various corporations, individuals and other entities. Petitioner's major clients and the respective services performed are as follows:

a) Goodyear - Petitioner advised Goodyear as to foreign exchange, foreign tax matters, foreign acquisitions and tire manufacturing regulations; resolved problems between Goodyear and auto manufacturers; and investigated purportedly improper foreign payments.

b) Guy L. Wagoner Estate - Petitioner acted as arbiter between two groups of heirs; he also reviewed and approved all oil and gas leases for the estate. These activities were performed prior to, during and after leaving government service.

c) Phillips Petroleum - Petitioner served as legal counsel before agencies or committees with public record where he believed there was no conflict of interest with prior government service. All billings were made through the law firm of Roberts & Holland.

d) Texaco - Petitioner advised Texaco on import regulations, tax and anti-trust matters, where he believed there was no conflict of interest with prior government service.

e) Kuwait - Petitioner advised the government of Kuwait on setting up corporations that would be acceptable to the Western legal system in foreign transactions.

f) Bank of America - Petitioner acted as legal advisor to the Board of Directors; represented the Bank of America in a Federal Reserve investigation of activities; and helped form an offshore banking corporation.

g) Ryder Trucks - Petitioner advised the corporation as to its shareholders' rights; appeared before the Interstate Commerce Commission in rate schedule cases; and advised in rate discrimination cases.

h) Anderson Commercial Corporation - Petitioner performed legal services for this corporation, which he formed together with his two sons.

i) Tennessee/Argentina - Petitioner negotiated and drafted loan guarantees made by oil companies to a consortium of foreign banks.

j) Magnavox - Petitioner conducted negotiations for a treaty to import mahogany from Central America.

k) American International Oil Company - Petitioner conducted treaty negotiations for a copper lease with the government of Zaire.

l) Leo Templesman - Same Zaire copper lease as item "k", supra.



m) Argentine Cities Service - Petitioner helped resolve legal difficulties between the Cities Service Group and partners.

n) Roberts & Holland - Petitioner became counsel, rather than partner, otherwise the law firm would have been limited in its activities because of petitioner's government service. The fees he received from Roberts & Holland were essentially for legal services.

o) Warner Brothers - Petitioner met with the general counsel of the Treasury with respect to tax matters involving a merger; and served as arbiter between two sides in a merger.

p) Canon, White & Okum - Petitioner handled several small legal matters along the Eastern seaboard for this Louisiana law firm and received co-counsel fees.

q) Coudert Brothers - Petitioner received co-counsel fees from this New York City law firm regarding the workout of a legal agreement between Peru, the United States government and an American client.

r) Strook Strook & Lavan - Petitioner received co-counsel fees from this New York City law firm for resolving problems in Germany and Yugoslavia.

s) Dr. Pedro Grau - Petitioner met with various educators and presidents of South American countries to help his client establish a university for all Latin American countries.

6. Petitioner was a limited partner in Loeb, Rhodes. He had no office at Loeb, Rhodes and his activities for the firm required only about five percent of his time.

7. The increased deficiency claimed in the answer appears to be based on copies of what seem to be proposed Federal audit changes for the year 1969. The copies (consisting of three pages, one of which is mostly illegible)

indicate that fee income was adjusted by a \$150,000.00 increase with the increase being subsequently reduced by \$72,000.00 "for settlement purposes". One page is stamped "Received Income Tax Files May 3, 1976". At the hearing, the Audit Division admitted that it did not know where the documents came from, only that they "were in the trial attorney's file for the years 1969 and 1970". There was no showing that final Federal changes were ever made for 1969 with respect to such income.

#### CONCLUSIONS OF LAW

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

"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 services actually rendered by the individual or the members of the partnership or other entity, shall not be deemed an unincorporated business."

B. That the activities performed by petitioner Robert B. Anderson, as exemplified by the activities set forth in Finding of Fact "5", supra, constituted the practice of law and the income therefrom was not subject to unincorporated business tax. Mr. Anderson's activities were typical of any high level government official who leaves office to return to the practice of law.

C. That under section 689(d) of the Tax Law, a deficiency may be increased if claim therefor is made at or before the hearing. In this case, claim for the increase as to the \$78,000.00 in income for 1978 was timely made.

D. That section 689(e)(3) of the Tax Law provides that where the Audit Division asserts an increased deficiency after the Notice of Deficiency is mailed and the petition is filed, the burden of proof as to the increased deficiency is on the Audit Division, unless the increase was a result of a final change or correction of Federal taxable income (or also, subsequent to

the years at issue, Federal items of tax preference) required to be reported under section 659 and of which final change or correction the Audit Division had no notice at the time it mailed the Notice of Deficiency.

Thus, here the burden of proof as to the increased deficiency was on the Audit Division.

E. That the Audit Division did not sustain its burden of proof with respect to the increased deficiency asserted in the answer. The Audit Division has not shown that the copies of the proposed Federal changes submitted in evidence constituted a final Federal determination for 1969. Therefore, it was premature for the Audit Division to assert a greater deficiency based on said proposed Federal changes. Nothing in this conclusion is to be construed as relieving petitioner of his responsibility to report to the Audit Division, pursuant to section 659 of the Tax Law, the results of a final Federal determination or to preclude the Audit Division from issuing an assessment pursuant to sections 681(e) and 683(c)(1)(C) of the Tax Law.


F. That the petitions of Robert B. Anderson and Ollie M. Anderson are granted to the extent indicated in Conclusions of Law "B" and "E"; the deficiencies are otherwise sustained.


G. That the claim for increased deficiencies made by the Audit Division in its answer is denied.

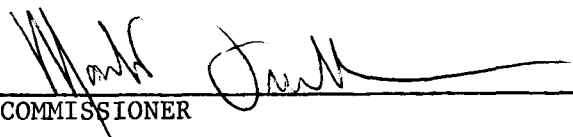
DATED: Albany, New York

STATE TAX COMMISSION

AUG 30 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER