

Mr. E. H. Best, Counsel  
(Attention James Scott)  
Mr. Edward Rook

In the matter of the application of  
Henry D. Reichlin, for revision or  
refund of an additional assessment  
of unincorporated business taxes  
under Article 16-A of the Tax Law  
for the year 1959.

Enclosed are one original and 4 reproduced copies of the  
decision signed by the State Tax Commission. In addition  
the petitioner's file is forwarded for return to the  
operating bureau.

EDWARD ROOK  
Secretary to the  
State Tax Commission

April 23, 1969

LAN:FW

*Sent to L. B*  
*4-24-69*

Page 1 of 1  
Date: 1/1/1980  
Time: 10:00 AM

The following information was obtained from the records of the Department of the Interior, Bureau of Land Management, regarding the land owned by the United States in the State of California.

The total area of land owned by the United States in the State of California is approximately 100,000,000 acres.

Very truly yours,  
Director

1/1/1980

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF  
HENRY D. REICHLIN  
FOR REVISION OR REFUND OF AN  
ADDITIONAL ASSESSMENT OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF  
THE TAX LAW FOR THE YEAR 1959.

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Henry D. Reichlin having filed a demand for a hearing in the matter of his application for revision of an additional assessment of unincorporated business taxes under Article 16-A of the Tax Law for the year 1959, and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York, on March 2, 1967 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, and the taxpayer having been represented at the hearing by Peter Graf, C.P.A., of the accounting firm of Joseph Graf and Company, and the matter having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) The taxpayer, Henry D. Reichlin, timely filed a New York State income tax resident return for the year 1959 but did not file an unincorporated business tax return for that year.

(2) On December 30, 1963, the Department of Taxation and Finance issued a Notice of Additional Assessment, numbered FA 00849, against the taxpayer, Henry D. Reichlin, for the taxable year 1959, holding that the business activities of the taxpayer constituted the carrying on of an unincorporated business, and the profit therefrom was subject to the tax under Article 16-A of the Tax Law.



This notice of additional assessment was issued for the sum of \$656.37 of additional normal tax; the sum of \$218.29 in additional unincorporated business tax; less credit in the amount of \$9.92 allowed for the year 1957, leaving a balance due in the sum of \$864.74. On March 23, 1964, the Department of Taxation and Finance cancelled a portion of the additional assessment, thereby reducing the additional unincorporated business tax due by the sum of \$39.95, and thereby reducing the additional normal tax by the sum of \$124.33.

(3) An application for revision or refund on behalf of the taxpayer for the year 1959 was denied on April 20, 1964, and a demand for a hearing was thereafter timely filed in accordance with Section 374 of the Tax Law. The taxpayer, Henry D. Reichlin has not petitioned for a redetermination of that portion of the notice of additional assessment representing the computation of the sum of the additional normal tax.

(4) The taxpayer, Henry D. Reichlin, was engaged in a business activity of consultant and adviser on investments to a corporation known as The New England Industries, Inc. under the terms of a contract dated January 31, 1957, and amended April 21, 1958. The terms of the contract and amendment were that the taxpayer, was required to work an average of three days per week, later increased to five days, and be available by telephone on the remaining days of the week. The taxpayer, was paid by means of a consultation fee in the sum of \$150 per week, later increased to \$250 per week, and in addition, by a participation of 5% in the net profit realized by The New England Industries, Inc. on purchases and sales of securities that were based exclusively on the advice of the taxpayer. The taxpayer, received the sum of \$14,740 from The New England Industries, Inc. representing an agreed settlement of claims arising from the contract, and amended contract, entered into by the said parties.

The taxpayer included the sum of \$14,740 in a detailed schedule of capital gains contained with the taxpayer's New York State resident income tax return with the designation "Long Term Capital Gain from Joint Venture, Supreme Court New York Judgment."

(5) In support of the contention that an employer-employee relationship existed, the taxpayer's representative, Mr. Peter Graf, reported statements which were made to him by the taxpayer to the effect that, in addition to the written contract, there was a verbal agreement that the taxpayer would not do consulting work for anyone else, that the taxpayer received a paid vacation of two weeks and was compensated as well on occasional days that he had been absent due to illness. The taxpayer's representative further stated that the taxpayer did not apply for unemployment benefits when the contract was terminated because the taxpayer did not believe that anyone who is able to work should accept these benefits, and that the fact that New England Industries, Inc. had not withheld any sums as payroll taxes from their payments to the taxpayer was a clerical error by employees of the corporation.

(6) In contrast to the taxpayer's position, New England Industries, Inc. which had engaged the taxpayer, Henry D. Reichlin's services, had not deducted any amounts as taxes which are required to be withheld from wages paid to employees, but had paid to the taxpayer the gross amount which had been agreed upon.

The taxpayer has failed to show that New England Industries, Inc. exercised the degree and kind of supervision and control over the taxpayer's activities as would indicate a relationship of employer to employee.

(7) The weight of the evidence presented supports the conclusion that the taxpayer, Henry D. Reichlin, had been engaged and compensated by New England Industries, Inc. as an independent consultant, and that consequently, a relationship of employer to employee had not existed.

(8) The taxpayer's representative contended further that in the event the taxpayer is found not to be an employee, then the income in issue is derived from activities which would constitute the practice of a recognized profession within the intent and meaning of Section 386 of the Tax Law.

However, evidence was not presented to establish that the taxpayer was in possession of knowledge of an advanced type in the field of investments gained by a prolonged course of specialized instruction, or that he utilized certain knowledge or skills gained thereby in his activities.

In addition, the courts have decided that an investment consultant is not engaged in a profession. (Dewey v. Browne, 269 App. Div. 887, 56 N.Y.S. 2nd 255)

Based upon all the evidence presented and the resulting findings,

The State Tax Commission hereby

DECIDES:

(A) That, the taxpayer, Henry D. Reichlin, has been found not to be an employee, and not to be engaged in an exempt profession, and that the income of the taxpayer, derived from his contractual association with New England Industries, Inc. constitutes income from conducting an unincorporated business and was subject to tax under Article 16-A of the Tax Law.

(B) That, accordingly, the Notice of Additional Assessment for the year 1959 (set forth in paragraph 2 above) was properly issued; the tax and interest stated therein and as partially cancelled by the Department of Taxation and Finance are correct and are due and owing, together with any other lawful interest and statutory charges.

(C) That, the taxpayer's application for revision or refund of the additional assessment under Article 16-A of the Tax Law for the year 1959 is hereby denied.

Dated: Albany, New York on this 22 day of April 1969.

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

STC-4-10-69