

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HAROLD J. & KATHLEEN F. SMITH

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1960, 1961 & :
1962

State of New York
County of Albany

Janet Wright, 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 23 day of October, 1969, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Harold J. &
Kathleen F. Smith (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harold J. & Kathleen F. Smith
Riverview Road
Irvington, New York 10533

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of~~) 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

24th day of October, 1969

Grace E. Pritchard

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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HAROLD J & KATHLEEN F. SMITH

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1960, 1961 & :
1962

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Janet Wright, 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 23rd day of October, 1969, she served the within
Notice of Decision (~~XXXXXX~~) by (certified) mail upon Leo J. Kirkmayer,
CPA (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Leo J. Kirkmayer, CPA
170 Broadway
New York, New York 10038

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

24th day of October, 1969

Grace E. Pritchard

Janet Wright

U.B.T. Determinations
A-2

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

Smith, Harold J. &
Kathleen F.

TO: Mr. Edward Rook
FROM: Lawrence A. Newman
SUBJECT: Harold J. and Kathleen F. Smith
Proposed Decision
Article 23, 1960, 1961 and 1962

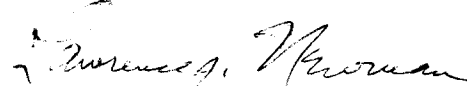
DATE October 8, 1969
OFFICE Hearing Unit

OK KJ

The petitioner is a licensed insurance adjuster, who claims to be engaged in a profession and as such exempt from the unincorporated business tax. (Sec. 703(c)).

There is considerable support for the denial of the petition by following the history of interpretations of the comparable section (Sec. 386) of Article 16-A. Court opinions and regulations have been paraphrased in the reasoning of the attached draft.

I offer the proposed decision for the approval of the State Tax Commission.



LAWRENCE A. NEWMAN
Hearing Officer

LAN:jw

(signed & dated 10/23/69)
Mr. Newman

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HAROLD J. AND KATHLEEN F. SMITH : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated :
Business Taxes under Article 23 of the :
Tax Law for the Years 1960, 1961 and 1962 :

The taxpayers, Harold J. and Kathleen F. Smith, filed a petition for redetermination of a deficiency or for refund of Unincorporated Business taxes under Article 23 of the Tax Law for the years 1960, 1961 and 1962. A formal hearing was held in the City of New York before Lawrence A. Newman, Hearing Officer. The taxpayer, Harold J. Smith appeared and testified, and was represented by Leo J. Kirmayer, CPA.

FINDINGS OF FACTS

1. The taxpayers, Harold J. and Kathleen F. Smith, have timely filed New York State Income Tax Resident returns for the years 1960, 1961 and 1962.

The taxpayer, Harold J. Smith, listed his occupation as "insurance adjuster", and did not file unincorporated business tax returns for the years in question, contending that his occupation is exempt therefrom under the provisions of Section 703(c) of the Tax Law.

2. On February 8, 1965, the Income Tax Bureau of the Department of Taxation and Finance issued a Notice of Deficiency, file number 2-6145512, holding the taxpayer, Harold J. Smith, subject to the unincorporated business tax for the years 1960, 1961 and 1962, in the amounts of \$979.91, \$1808.63 and \$1186.43 respectively, plus computed statutory interest.

3. On May 7, 1965, the taxpayers filed a petition for redetermination of the deficiency.

4. The taxpayer contends that he is an independent insurance adjuster, who was required to pass a New York State examination to be licensed as such. The taxpayer is hired by, and represents insurance companies, investigating claims of loss and negotiating of binding settlements. He is a member of the New York Association of Independent Insurance Adjusters, a graduate of the United States Merchant Marine Academy, and has attended courses at Columbia University and Pohs Institute of Insurance on various insurance subjects. The taxpayer contends that licensed independent adjusters are referred to as a profession by the Insurance Industry and by their agents and brokers.

5. The taxpayer represents in excess of twenty insurance companies and receives fees from these companies based upon time spent and the complexity of the assignment. The taxpayer maintains his own office and clerical staff.

6. The term "professional" as applied to services rendered, under Section 703(c), implies the requirement of knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study.

Licensing by the state and supervision of activities are unsatisfactory standards by which to determine whether an occupation is a "profession" rather than a "trade" or "business" within the meaning of Section 703(c) of the Tax Law.

That the petitioner might be expert on particular subjects does not necessarily mean that he was practicing a profession so as to be exempt from the unincorporated business tax.

DECISION

A. The petitioner has failed to prove that his occupation "insurance adjuster" is a profession within the meaning of Section 703(c) of the Tax Law.


B. The income from petitioner's activities as "insurance adjuster" are subject to the Unincorporated Business Tax, under Article 23 of the Tax Law.

C. The Notice of Deficiency issued against the petitioners on February 8, 1965 for the years 1960, 1961 and 1962, in the amounts of \$979.91, \$1808.63 and \$1186.43 respectively, plus computed statutory interest, has been correctly issued, and is sustained.


D. The taxpayer's petition for redetermination of the deficiency is hereby denied.

DATED: Albany, New York this 23rd day of October 19 69.

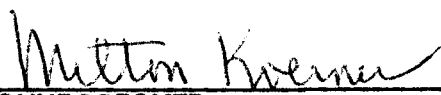
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER