

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

T. MARCELLUS AND NANCY MURPHY

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) 1962, 1963 and 1964.

State of New York
County of Albany

Rae Zimmerman, 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 28th day of December, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon T. Marcellus and Nancy Murphy (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: T. Marcellus and Nancy Murphy
33-20 214th Place
Bayside, New York

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

28th day of December, 1971

Maitha F. Lirio

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
T. MARCELLUS AND NANCY MURPHY : DECISION
for a Redetermination of a Deficiency
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law
for the Years 1962, 1963 and 1964. :

T. Marcellus and Nancy Murphy have filed a petition under sections 722 and 689 of the Tax Law for the redetermination of deficiencies in unincorporated business tax under Article 23 of the Tax Law for the years 1962, 1963 and 1964. A hearing was duly held on November 19, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner appeared in person and without a representative. The Income Tax Bureau appeared by Edward H. Best, (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether T. Marcellus Murphy, who operates the Mark Murphy School, is exempt from unincorporated business tax on the grounds that he is practicing a profession as defined in section 703(c) of the Tax Law. The total deficiency plus interest to the date of the deficiency has been paid.

FINDINGS OF FACT

1. Mr. Murphy has a Ph.D. from the American College of Rome, Italy. Mr. Murphy was a high school teacher and guidance counselor for 14 years. He has been the assistant director and principal of the Delehanty Institute, a private high school, for 5 years.
2. Mr. Murphy operated the "Mark Murphy School." This school performed the service of preparing students to take competitive entrance exams for the parochial high schools and many of the public

high schools in New York City. His typical student was 13 years old. Students receive instruction in timing of their efforts, working under stress and how to guess answers. His fee is about \$35.00 per student. Mr. Murphy disclaims that his enterprise was a school in the ordinary sense since it did not have regular classes and did not use textbooks.

3. Mr. Murphy's facilities include only an office. He rents halls near local public schools for the conduct of his classes. His wife worked with him full time but drew no salary. She did public contact work. His only regular employee was a woman who worked part-time in the office. During a typical year, he would hire about 65 teachers for no more than 16 hours each to conduct classes on Saturdays. The function of the teachers is to follow their instructions, to monitor a test exam, to maintain order and to draw upon general knowledge to explain why an answer is correct.

4. Mr. Murphy spends much time keeping abreast of the trends in testing and in the evaluation of test results. He does this through periodical literature and personal contacts with people who design tests. He neither solicits nor accepts questions used on past exams. The academic level of the tests do not go beyond ninth grade mathematics and English. Mr. Murphy writes all of his sample test questions and answers.

5. In one typical year, Mr. Murphy's gross income was about \$70,000.00 and his expenses \$42,000.00. Of the expenses, \$18,000.00 was paid to teachers. He has working capital of about \$7,000.00 used mainly to cover salaries.

CONCLUSIONS OF LAW

Petitioner's activity is most appropriately characterized as the conduct of training sessions for high school students taking aptitude exams; such activity is not professional. Such activity is not teaching as no knowledge of a substantive area of learning is being imparted to the students. Such activity is not licensed

as a profession and the academic qualifications necessary for such activity are not sufficiently high to qualify as professional.

DECISION

A. The petition is denied and the deficiencies are affirmed. As such deficiencies have been paid, no further amounts are due and owing.

DATED: Albany, New York

December 28, 1971

STATE TAX COMMISSION

Leopoldo Gelman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Krein
COMMISSIONER