

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RICHARD C. GUZEWICH

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

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

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 6th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Richard C. Guzewich (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Richard C. Guzewich
21 Lower Woods Road
New Hartford, 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

6th day of April, 1972

Martha Fuxaro

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD C. GUZEWICH

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 :

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OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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 6th day of April , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon

Charles L. Smith, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Charles L. Smith, Esq.
1017 Park Avenue
Utica, 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

6th day of April , 1972

Martha F. Harris

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 6, 1972

Richard C. Guzewich
21 Lower Woods Road
New Hartford, New York

Dear Mr. Guzewich:

Please take notice of the Decision of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within 4 months after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RICHARD C. GUZEWICH :
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1962 and 1963. :

A hearing was held at the offices of the State Tax Commission at Utica, New York, on November 16, 1970, before L. Robert Leisner, Hearing Officer. The petitioner was represented by Charles L. Smith, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

Were petitioner's activities in teaching and operating a Dale Carnegie School exempt as a profession from unincorporated business tax under section 703(c) of the Tax Law?

1. Petitioner, Richard C. Guzewich, timely filed New York State personal income tax returns for the years 1962 and 1963, but did not file unincorporated business tax returns for those years.

2. On March 27, 1967, the Income Tax Bureau under File Number 26199893 issued a notice of a determination of deficiencies in unincorporated business taxes for the years 1962 and 1963.

3. The taxpayer timely filed a petition for redetermination of the deficiencies and asserted that his activities in teaching and operating a franchised Dale Carnegie School were exempt as a profession from unincorporated business tax under section 703(c) of the Tax Law.

4. The petitioner had passed the Dale Carnegie instructors course, and paid fees to a sponsor who held an area franchise.

5. In 1962, the petitioner's school had receipts of \$33,475.00 and "Instruction and Franchise and Sales Instruction" expenses of \$14,388.37. He also had general expenses which produced net income of \$13,510.48. In 1963, he had receipts of \$48,792.50 and similar franchise and instruction expenses as well as general expenses so that his net income from the school was \$13,572.61.

Petitioner had at one time, prior to the years in issue, taught physics and mathematics. The petitioner was licensed to teach in the secondary schools, but there is no evidence that this was a required qualification for teaching the Dale Carnegie courses.

CONCLUSIONS OF LAW

A. More than 20% of the petitioner's gross income went for the payment of sponsor fees and payments for instruction and sales instruction by others which had the immediate effect of reducing the amount of gross income attributable and available for taxpayer's personal services below the 80% level fixed by statute. Matter of Hewitt v Bates, 297 N.Y. 239, at 243.

B. Petitioner's activities in teaching and operating a Dale Carnegie School were not exempt from unincorporated business tax under section 703(c) of the Tax Law.

C. The petition is denied and the determination of deficiencies in unincorporated business taxes for the years 1962 and 1963 is sustained.

D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York

April 6, 1972

STATE TAX COMMISSION

Norman Spelman
COMMISSIONER

Charles Manley
COMMISSIONER

William Koenig
COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 6, 1972

Richard C. Guzewich
21 Lower Woods Road
New Hartford, New York

Dear Mr. Guzewich:

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within 4 months after the date of this notice.

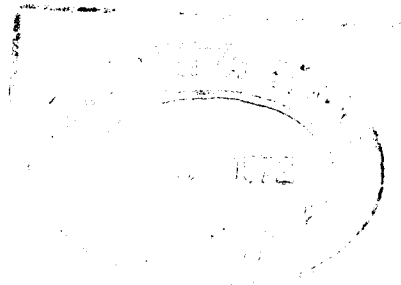
Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner

Hearing Officer

cc Petitioner's Representative
Law Bureau



AD 32 (5-71) 50M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

APR 10 1972

NOTIFIED



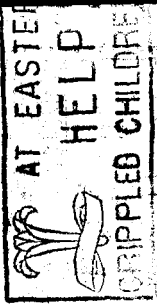
RETURNED
TO
WRITER

REASON CHECKED

Unclaimed ☒ Refused
Addressee unknown
Insufficient Address
No such street number
No such office in state
Do not re-mail in this district

Richard C. Guzewich
21 Lower Woods Road
New Hartford, New York

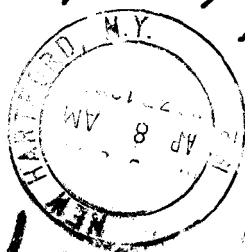
UTICA NY 13501



CERTIFIED

No. 592916

MAIL



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD C. GUZEWICH	:	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 and 1963.	:	

Richard C. Guzewich petitioned for a redetermination of deficiencies in unincorporated business taxes for the years 1962 and 1963.

A hearing was held at the offices of the State Tax Commission at Utica, New York, on November 16, 1970, before L. Robert Leisner, Hearing Officer. The petitioner was represented by Charles L. Smith, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were petitioner's activities in teaching and operating a Dale Carnegie School exempt as a profession from unincorporated business tax under section 703(c) of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Richard C. Guzewich, timely filed New York State personal income tax returns for the years 1962 and 1963, but did not file unincorporated business tax returns for those years.
2. On March 27, 1967, the Income Tax Bureau under File Number 26199893 issued a notice of a determination of deficiencies in unincorporated business taxes for the years 1962 and 1963.
3. The taxpayer timely filed a petition for redetermination of the deficiencies and asserted that his activities in teaching and operating a franchised Dale Carnegie School were exempt as a profession from unincorporated business tax under section 703(c) of the Tax Law.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

RICHARD C. GUNSWICK

for a Reformation of a Deliberation
of the Board of Taxation and Finance
under Article 13 of the Tax Law
for the Years 1962 and 1963.

Richard C. Gunswick petitioned for a reformation of a deliberation
in incorporated business taxes for the years 1962 and 1963.

A hearing was held at the office of the State Tax Commission at

Albany, New York, on November 14, 1963, before J. Robert Feltner,

Commissioner of the State Tax Commission, and J. Robert Feltner,

Esq., and the Income Tax Bureau was represented by William H. Smith, Esq.,

(Alexander Weiss, Esq., of Counsel).

That

the petitioners' activities in carrying and operating a State

Corporation (which) were a corporation from incorporated business

tax under section 103(a) of the Tax Law.

THAT THE PETITIONERS

1. Petitioners, Richard C. Gunswick, Esq., filed New York State

personal income tax returns for the years 1962 and 1963, and did not

file incorporated business tax returns for those years.

2. On March 27, 1964, the Income Tax Bureau under the direction

of the Commissioner issued a notice of a determination of deficiency in which

incorporated business taxes for the years 1962 and 1963.

3. The petitioners timely filed a petition for reformation

of the deficiency and asserted that the activities in carrying and

operating a franchised State Tax Commission were exempt as a profession

from incorporated business tax under section 103(a) of the Tax Law.

4. The petitioner had passed the Dale Carnegie instructors course, and paid fees to a sponsor who held an area franchise.

5. In 1962, the petitioner's school had receipts of \$33,475.00 and "Instruction and Franchise and Sales Instruction" expenses of \$14,388.37. He also had general expenses which produced net income of \$13,510.48. In 1963, he had receipts of \$48,792.50 and similar franchise and instruction expenses as well as general expenses so that his net income from the school was \$13,572.61.

Petitioner had at one time, prior to the years in issue, taught physics and mathematics. The petitioner was licensed to teach in the secondary schools, but there is no evidence that this was a required qualification for teaching the Dale Carnegie courses.

CONCLUSIONS OF LAW

A. More than 20% of the petitioner's gross income went for the payment of sponsor fees and payments for instruction and sales instruction by others which had the immediate effect of reducing the amount of gross income attributable and available for taxpayer's personal services below the 80% level fixed by statute. Matter of Hewitt v Bates, 297 N.Y. 239, at 243.

B. Petitioner's activities in teaching and operating a Dale Carnegie School were not exempt from unincorporated business tax under section 703(c) of the Tax Law.

C. The petition is denied and the determination of deficiencies in unincorporated business taxes for the years 1962 and 1963 is sustained.

D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York

April 6, 1972

STATE TAX COMMISSION

Korner
COMMISSIONER

Chase Mauley
COMMISSIONER

Milton Krenn
COMMISSIONER

4. The petitioners had received the State University instruction

courses and paid fees to a person who held an oral license.

5. In 1952, the petitioners' school had receipts of \$23,471.00

and "instruction and franchise and sales instruction" expenses of

\$14,100.00. He also had general expenses which included rent, light

of \$13,100.00. In 1953, he had receipts of \$43,722.50 and similar

franchise and instruction expenses as well as general expenses to

that his net income from the school was \$13,722.50.

6. Petitioner had at one time, prior to the years in issue, taught

physics and mathematics. The petitioner was licensed to teach in

the secondary schools, but there is no evidence that this was a

required qualification for teaching the State University courses.

COMPUTATION OF TAX

A. More than 50% of the petitioner's gross income was for the

payment of income taxes and payments for instruction and sales license

from by others which had the immediate effect of reducing the amount

of gross income attributable and available for taxpayer's personal

services before the 10% level fixed by Section 1401(a) of the Internal

Revenue Act of 1954, as amended.

B. Petitioner's activities in teaching and operating a State

University School were not entered into an incorporated business tax

under Section 1361(a) of the tax law.

C. The petition is denied and the determination of their liability

in incorporated business taxes for the years 1952 and 1953 is

affirmed.

D. Payment to the tax law, but such shall be added to the total

STATE TAX COMMISSION

CHIEF, TAX DIVISION

COMMISSIONER

CHIEF, TAX DIVISION

COMMISSIONER