

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL C. OLKEN

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) 1967 and 1968.

State of New York
County of Albany

Lynn Wilson, 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 2nd day of October, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon SAMUEL C. OLKEN

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Samuel C. Olken

45 Kew Gardens Road
Kew Gardens, New York 11415

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

2nd day of October, 1972.

Martha Ferraro

Lynn Wilson



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
October 2, 1972

Mr. Samuel C. Olken
45 Kew Gardens Road
Kew Gardens, New York 11415

Dear Mr. Olken:

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,

Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAMUEL C. OLKEN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967 and 1968.	:	

Petitioner, Samuel C. Olken, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967 and 1968. (File No. 29210023). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on February 15, 1972, at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Did petitioner, Samuel C. Olken's activities as an economic consultant during the years 1967 and 1968 constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioner, Samuel C. Olken, and his wife filed New York State income tax resident returns for the years 1967 and 1968. He also filed New York State unincorporated business tax returns for

said years. He reported as net income from business on said returns the income that he received from his activities as an economic consultant during said years.

2. On January 7, 1970, petitioner, Samuel C. Olken, filed claims for credit or refund of unincorporated business tax paid for the years 1967 and 1968 upon the grounds that his activities as an economic consultant during said years constituted the practice of a profession exempt from the imposition of said tax.

3. On August 31, 1970, the Income Tax Bureau issued a notice of disallowance of petitioner, Samuel C. Olken's claims for refund of unincorporated business tax paid for the years 1967 and 1968.

4. Petitioner, Samuel C. Olken was an economic consultant for the American Telephone & Telegraph Company and two railroads during the years 1967 and 1968. He discovered and presented economic facts and analysis thereof for said companies to be used in connection with proceedings before various governmental regulatory agencies and judicial tribunals. His net business income from his activities as an economic consultant was \$33,988.16 in 1967 and \$59,724.60 in 1968.

5. In excess of 80% of petitioner, Samuel C. Olken's income as an economic consultant during the years 1967 and 1968 was derived from personal services rendered. Capital was not a material income producing factor.

6. Petitioner, Samuel C. Olken, received an AB degree

in economics from Harvard University in 1922. Thereafter he took graduate economic courses at New York University and The New School for Social Research. He has been a member of the American Economic Association, the American Statistical Association, the National Association of Business Economists, the Economics Research Round Table and the Downtown Economists Luncheon Group. He was employed by Western Electric Co., Inc. as an economist until his retirement in 1965. At the time of his retirement he was in charge of the economics department of said corporation.

CONCLUSIONS OF LAW

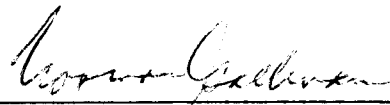
A. That the activities of petitioner, Samuel C. Olken, as an economic consultant during the years 1967 and 1968, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Samuel C. Olken, during the years 1967 and 1968 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.


C. That the petition of Samuel C. Olken is denied and the denial of his claims for credit or refund of unincorporated business tax for the years 1967 and 1968 is sustained.

DATED: Albany, New York
October 2, 1972

STATE TAX COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER