

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN RAFAL & BEATRICE RAFAL, d/b/a  
MARVIN RAFAL ASSOCIATES

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

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

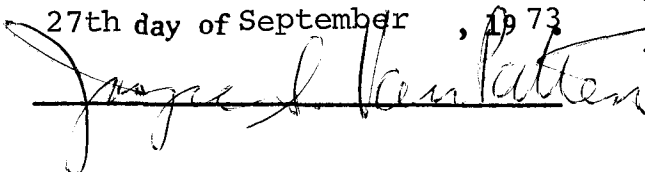

State of New York  
County of Albany

Martha Funaro , 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 27th day of September , 19 73, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Marvin Rafal &  
Beatrice Rafal, d/b/a (representative of) the petitioner in the within  
Marvin Rafal Associates  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. & Mrs. Marvin Rafal  
d/b/a Marvin Rafal Associates  
33 Turner Drive  
New Rochelle, 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

27th day of September , 19 73

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MARVIN RAFAL & BEATRICE RAFAL, d/b/a  
MARVIN RAFAL ASSOCIATES

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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

State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of September , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Jerome Margolies,  
C.P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

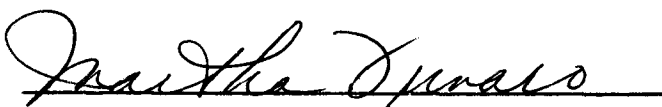
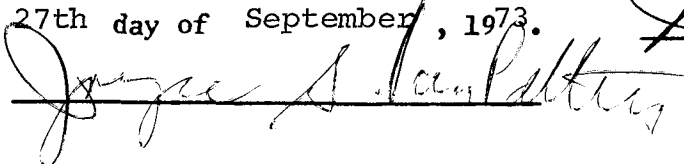
wrapper addressed as follows: Jerome Margolies, C.P.A.  
225 West 34 Street  
New York, New York 10001

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Sworn to before me this

27th day of September , 1973.



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

Mario A. Procaccino,  
~~WORKING MAN'S PRESIDENT~~

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

September 27, 1973

Mr. & Mrs. Marvin Rafal  
d/b/a Marvin Rafal Associates  
33 Turner Drive  
New Rochelle, New York

Dear Mr. & Mrs. Rafal:

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 deci-  
sion must be commenced within **4 Months**  
from 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 relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

Nigel G. Wright

Enc.

HEARING OFFICER

cc: Petitioner's Representative  
Law Bureau

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
MARVIN RAFAL and BEATRICE RAFAL, d/b/a :  
MARVIN RAFAL ASSOCIATES : DECISION  
for Redetermination of Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law :  
for the Year 1960. :

A hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York City, before Vincent P. Molineaux, Hearing Officer. Petitioners were represented by Jerome Margolies, C.P.A., with petitioner, Marvin Rafal, present.

## ISSUES

The issues are (1) whether the petitioners, Marvin Rafal and Beatrice Rafal, d/b/a Marvin Rafal Associates, during 1959 received income from a professional partnership so as to be exempt from unincorporated business tax under Article 23 of the Tax Law and (2) whether the deficiency notice, File No. 3667, dated April 13, 1964, for the taxable year 1960 was timely mailed to petitioners.

FINDINGS OF FACT

1. Petitioner, Marvin Rafal, has had university training in education and psychology and had served from 1947 to 1953 on the faculty of Rutgers University in the Department of Marketing.

2. Under consideration for the year 1960, the gross income of petitioners was derived mostly from fees received from various companies and trade associations for whom petitioner, Marvin Rafal, prepared and delivered general courses in business management and related areas generally to management employees. The course syllabus that petitioner, Marvin Rafal, developed while at Rutgers University is similar to the one now used by him at these business seminars.

3. In 1958, Marvin Rafal formed a partnership with his wife, Beatrice Rafal, under the name of Marvin Rafal Associates. Marvin Rafal continued to conduct these business seminars as Marvin Rafal Associates and at times during 1960 employed professors from local colleges and universities to help him conduct these seminars. There is no evidence to establish that petitioner, Beatrice Rafal, was engaged in any professional capacity in the teaching of the courses conducted by Marvin Rafal Associates. No evidence has been submitted to establish that petitioner, Beatrice Rafal, has had any specialized training or knowledge needed to aid in the conduct of these seminars.

4. Petitioners claim that the IT-90 Notice of Deficiency, File No. 3667, dated April 13, 1964, for the year 1960 was received some time after April 15, 1964. The testimony of an

accountant in lieu of his clients' testimony at the hearing is not competent evidence to establish the date the deficiency notice, File No. 3667, was received by petitioner so as to contest the timeliness of its mailing by the Department of Taxation and Finance.

CONCLUSIONS OF LAW

A. The partnership of Marvin Rafal, a professional engaged in teaching business management seminars and Beatrice Rafal, a nonprofessional rendering no professional services to said partnership and d/b/a Marvin Rafal Associates, is not a professional partnership and income received therefrom by petitioners is not exempt under section 703(c) of the Tax Law for the year 1960.

B. The income received by petitioners, Marvin Rafal and Beatrice Rafal, from Marvin Rafal Associates is income received from an unincorporated business pursuant to section 703 of the Tax Law and is subject to unincorporated business tax pursuant to section 701 of the Tax Law.

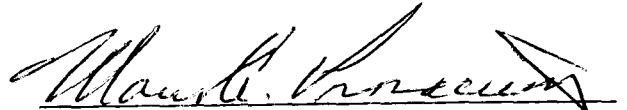
C. Since there is a presumption of regularity that the deficiency notice, File No. 3667, dated April 13, 1964, was timely mailed by the Department of Taxation and Finance and since the testimony of petitioners' representative at the hearing constituted hearsay evidence, the deficiency notice, File No. 3667, was therefore timely mailed to petitioners.


DECISION

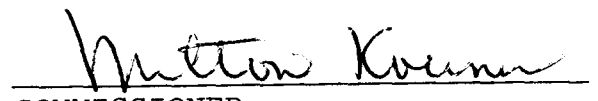
The petition is denied and the deficiency, File No. 3667,  
is due together with such further interest as may be due pursuant  
to section 684 of the Tax Law.

DATED: Albany, New York  
September 27, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER