

RUDIN, DAVID
U.B.T.

1972

VACATED

SEE JUNE 21, 1974

David Rudin

U.B.T.

1974

October 3, 1973

Mr. David Rudin
19390 Collins Avenue
Apt. 1022
Miami Beach, Florida 33160

Re: David Rudin

Dear Mr. Rudin:

This is in response to your letter received on
October 2, 1973.

You apparently wish me to comment upon the facts
stated in your affidavit and upon the decision of the
Commission mailed out on August 4, 1972.

I cannot, however, comment on these matters. The
Commissions' decision is legally final. It has been the
consistent practice of the Department that any such comment
would be pointless in these circumstances.

Very truly yours,

NGW/maf

Nigel G. Wright
Hearing Officer

David Rudin
19390 Collins Ave., Apt. 1022
Miami Beach, Florida, 33160

Att: Mr. Nigel G. Wright

State Tax Commission
State Campus
Bldg 9, Room 214 A
Albany, New York, 12227





INCOME, GIFT AND ESTATE TAX ANALYSIS
PENSION TRUST PLANNING
CORPORATE REORGANIZATIONS

DAVID RUDIN, *L.L.B., B.C.L.*

Tax Advisor to the Legal and Accounting Professions

(FORMERLY EXECUTIVE SECRETARY
INSTITUTE OF TAX CONSULTANTS, INC.)

27 WILLIAM STREET • NEW YORK 5, N. Y.

DIGBY 4-9191

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID RUDIN

for a Redetermination of a
Deficiency of Unincorporated
Business Taxes under Article
23 of the Tax Law for the
years 1964 through 1967

Based on

Default

*Completed
8-4-72*

STATE OF FLORIDA

DADE COUNTY

David Rudin, being duly sworn, deposes and say:

I am the taxpayer who filed a petition for a Redetermination for the years 1964, 1965, 1966 and 1967, based on Article 23 of the New York State Tax Law.

My age is 73 and I reside at 19390 Collins Avenue, Miami Beach, Florida, 33160, having formally elected to become a resident of the State of Florida on June 15, 1973, when I retired from active work.

The proposed deficiency resulted from my failure to attend a scheduled hearing on September 14, 1973, which I was not able to attend because two days prior to the scheduled hearing I had to

undergo emergency mouth surgery.

The deficiency is based on my failure to pay Unincorporated business taxes during the years involved. It is my contention that the type of income earned by me was not subject to the Unincorporated Business Tax. The Hearing Office, in the absence of the Petitioner, found, as a basis for the deficiency, (a total of \$5398.89 for the four years) that petitioner's activities of "management and pension planning", constituted an unincorporated business subject to tax. The quoted words were from my own characterization of my activities in the State Income Tax Returns which I filed. This characterization of activities is incorrect because my activities pertained exclusively to helping Attorneys and Accountants, in their respective provinces to do tax planning, frequently involving business management advice and services in the creation and preparation of Pension and Profit Sharing Plans. My activities were not of the nature of the conduct of a business but pertained entirely to the rendition of professional services. My letterhead correctly states the nature of my business, which was no more than a continuation of the work that I had been doing for a period of over twenty five years, for the firm of N.R.Caine & Co., C.P.A's, of which I was the senior member, in charge of its tax department, before I engaged in my own professional practice.

At no time did I employ persons, other than stenographers or typists, to help me in the rendition of my services. I worked largely for lawyers and accountants, who were aware of my knowledge and experience in tax matters. My services consisted of research, advice, the preparation of briefs, petitions and pension plans, and

sometimes, of services in connection with the organization and re-organization of corporations under Security and Exchange Regulations. I did no advertising and did not conduct a business. My work was confined to the rendition of services in which capital was neither necessary nor ever played any part.

Under Section 703, relating to income excluded from the Unincorporated Business Tax, the following is enumerated as exempt income:

1. Services rendered as an employee.
2. Professional services rendered, when capital is not a material income producing factor.
3. Services actually rendered by an individual, in the performance of which more than 80% of the gross income was derived from such personal services.

My income for the years 1964 through 1967 and for all succeeding years, falls squarely within the 2nd and 3rd exemptions enumerated above.

A Profession, by the definition as set forth in Section 703 and in Chapter 89 of the Laws of 1947 and 564 of the Act of 1960, is one "which includes any occupation or vocation in which a professed knowledge of some department of science or learning is used by it's practical application to the affairs of others, either in advising, guiding or teaching them, and in serving their interests or welfare, in the practice of an art founded on it. The word implies attainments in professional knowledge, as distinguished from mere skill, in the application of such knowledge to uses for others, as a vocation".

This definition specifically and most accurately describes

the nature of the services from which all of my income was derived. I had graduated from accounting and law schools, had for 25 years engaged in tax work and because of my educational background and experience my services were sought by and were useful to practicing lawyers and accountants.

For all of the foregoing reasons, I respectfully submit that none of the income in the years involved were subject to the Unincorporated Business Taxes.

Dade County, Florida

Sept. 28, 1973

David Rudin
DAVID RUDIN

Sworn to before me

this 28th day of Sept. 1973

Barbara Martin

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
COMMISSION EXPIRES AUG. 23, 1976
SECRETARY: J. B. CHANDLER, INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID RUDIN

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) 1964 - 1967. :

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

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 4th day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon DAVID RUDIN

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

wrapper addressed as follows: David Rudin
377 North Broadway
No. 311

Yonkers, 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

4th day of August , 1972.

Maitha F. Mass

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

August 4, 1972

David Rudin
377 North Broadway
No. 311
Yonkers, New York

Dear Mr. Rudin:

Please take notice of the **DECISION ON DEFAULT** 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,

Nigel G. Wright

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID RUBIN	:	DECISION ON
	:	DEFAULT
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1964 through 1967.	:	

David Rudin filed a petition pursuant to section 722 and 689 of the Tax Law for the redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the years 1964 through 1967.

A hearing was duly scheduled for 1:30 P.M., July 26, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York, New York before Nigel G. Wright, Hearing Officer. The Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel).

FINDINGS OF FACT

1. The deficiency in issue is dated April 11, 1969, and is in the amount of \$3,834.35 with a penalty under section 685(a) of the Tax Law of \$958.58 and interest of \$605.96 for a total of \$5,398.89.

2. The deficiency in issue is based upon a finding that petitioner's activities of "management and pension planning" constitutes an unincorporated business subject to tax.

3. The notice of hearing was sent to the address of petitioner last known to the department: 377 North Broadway, Yonkers, New York.

4. Neither the petitioner nor anyone on his behalf appeared at the time and place for the hearing and no explanation for their absence has been made.

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

August 4, 1972.

STATE TAX COMMISSION

Norman Gellman

COMMISSIONER

Reese Mackley

COMMISSIONER

Milton Koenig

COMMISSIONER

May 22, 1973

Mr. David Rudin
377 North Broadway
Yonkers, New York 10701

Dear Mr. Rudin:

This is in response to your letters dated May 7
and May 8, 1973.

Your case was reopened on October 13, 1972, and
it is awaiting a new hearing date. I cannot tell at
this time, however, as to when it will be reached
again.

Very truly yours,



Nigel G. Wright
Hearing Officer

NGW/maf

cc: James Scott, Esq.
Law Bureau
Gabriel Di Cerbo
Income Tax Bureau



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. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

October 13, 1972

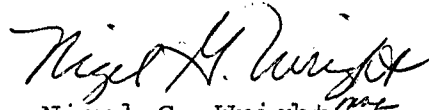
Mr. David Rudin
377 No. Broadway
Yonkers, New York 10701

Dear Mr. Rudin:

This is to acknowledge receipt of your letter of
October 10, 1972 .

The State Tax Commission will reopen your case
and a date for a hearing will be set at a future date.

Very truly yours,


Nigel G. Wright
Hearing Officer

cc: James Scott, Esq.
Law Bureau

see letter