

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE W. WARNER & MARY B. WARNER

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) 1963, 1964 & :
1965

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 5th day of April , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon

Myron Bush, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Myron Bush, Esq.
60 East 42nd Street
New York, N.Y. 10017

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

5th day of April , 1972.

Martha Furaw

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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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 5th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon George W. Warner
& Mary B. Warner (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: George W. Warner & Mary B. Warner
918 Maplecrest Drive
North Bellmore, New York 11710
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

5th day of April, 1972.
Martha F. [Signature]

Rae Zimmerman



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

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 5, 1972

George W. Warner & Mary B. Warner
918 Maplecrest Drive
North Bellmore, New York 11710

Dear Sir and Madam:

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

Please take further notice that pursuant to section 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 relat-
ing 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 :

GEORGE W. WARNER & MARY B. WARNER : DECISION

for Redetermination of Deficiency or :

for Refund of Unincorporated Business :

Tax under Article 23 of the Tax Law :

for the Years 1963, 1964 and 1965. :

Petitioners, George W. Warner and Mary B. Warner, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964 and 1965. (File No. 46045200). 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 October 21, 1971, at 11:00 A.M. Petitioners appeared by Myron Bush, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Did petitioner, George W. Warner's activities as a computer consultant during the years 1963, 1964 and 1965 constitute the practice of a profession?

II. Did petitioner, George W. Warner's activities as a computer consultant during the years 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

III. Did petitioner, George W. Warner, have reasonable cause for failing to file New York State unincorporated business tax

returns for the years 1963, 1964 and 1965?

FINDINGS OF FACT

1. Petitioners, George W. Warner and Mary B. Warner, filed New York State income tax resident returns for the years 1963, 1964 and 1965. They did not file New York State unincorporated business tax returns for said years.

2. On August 21, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, George W. Warner and Mary B. Warner, imposing unincorporated business tax upon the income received by petitioner, George W. Warner, from his activities as a computer consultant during the years 1963, 1964 and 1965 and accordingly issued a Notice of Deficiency in the sum of \$1,152.73.

3. Petitioner, Mary B. Warner, was neither employed or engaged in an unincorporated business during the years 1963, 1964 and 1965.

4. During the years 1963, 1964 and 1965 Louis Hand, Inc. was engaged in the manufacture of curtains and drapes. It was the world's largest independent manufacturer of said products. In 1963 it installed a new advanced computer system. It retained petitioner, George W. Warner, as a systems analyst and programmer in connection with the new computer operation. He received a fixed annual fee plus a bonus at the end of the year from the corporation. It did not withhold Federal or New York State income taxes or social security tax from the compensation paid to him. He did not receive the fringe benefits that were provided for employees of the corporation. He performed a substantial portion of his work for the corporation at home. The corporation did not exercise any

substantial supervision or control over his activities or over the time he devoted to his activities. On Schedule "C" of his federal income tax returns for said years he deducted minor expenses incurred in connection with his business activities. He was not reimbursed for any of these expenses.

5. Petitioner, George W. Warner, received a B.S. degree in accounting from the New York University School of Commerce in 1951. In 1954, he was employed by National Cash Register Company to aid in product installation. In 1960, he was employed by Saint Regis Paper Company as chief computer technician. He received a diploma of graduation in 1961 from the automatic data processing systems course for staff officers conducted by the United States Army. He received a certificate in data processing from the Data Processing Management Association in 1965. He was later elected to membership in said association.

6. There was no license required by the New York State Education Department or any other governmental agency for the type of services rendered by petitioner, George W. Warner, during the years 1963, 1964 and 1965. There were no university courses in the data processing field at the time he entered it. There are many universities that presently offer a degree in computer science.

7. During the years 1963, 1964 and 1965 all of petitioner George W. Warner's income as a computer consultant was derived from personal services rendered. Capital was not a material income producing factor.

8. Petitioner, George W. Warner, in his capacity as an accountant, concluded that he was not required to file New York State

unincorporated business tax returns for the years 1963, 1964 and 1965.

CONCLUSIONS OF LAW

A. That the activities of petitioner, George W. Warner, as a computer consultant during the years 1963, 1964 and 1965, 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 income received by petitioner, George W. Warner, from Louis Hand, Inc. during the years 1963, 1964 and 1965 constituted income from his regular business as a computer consultant and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the aforesaid activities of petitioner, George W. Warner, during the years 1963, 1964 and 1965 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.

D. That since petitioner, Mary B. Warner, was not engaged in an unincorporated business during the years 1963, 1964 and 1965, she was not liable for unincorporated business tax for said years.

E. That petitioner, George W. Warner, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1963, 1964 and 1965, and, therefore, the penalty imposed pursuant to section 685(a) of the Tax Law is waived.

F. That the petition of George W. Warner and Mary B. Warner, is granted to the extent of cancelling the Notice of Deficiency issued August 21, 1967, as against petitioner, Mary B. Warner, and of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1963, 1964 and 1965 and the Notice of Deficiency issued August 21, 1967, as against petitioner, George W. Warner is reduced from \$1,152.73 to \$943.23 together with such interest as may be due from August 21, 1967, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

April 5, 1972

Norman Gellman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Korman

COMMISSIONER