

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH H. KELLY

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 and;
1965

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 15th day of February, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon JOSEPH H. KELLY

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

wrapper addressed as follows:

Joseph H. Kelly
349 Woodbridge Lane
Jericho, New York 11753

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

15th day of February, 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED Albany, New York
February 15, 1973

Joseph H. Kelly
349 Woodbridge Lane
Jericho, New York 11753

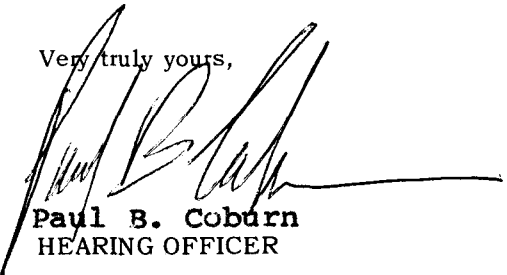
Dear Mr. Kelly:

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	:	
JOSEPH H. KELLY	:	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.	:	

Petitioner, Joseph H. Kelly, 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 1963, 1964 and 1965. (File No. 46750079). 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 December 11, 1972, at 3:00 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Did petitioner, Joseph H. Kelly's activities as a data processing consultant during the years 1963, 1964 and 1965 constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioner, Joseph H. Kelly, and his wife filed New York State income tax resident returns for the years 1963, 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On January 22, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joseph H. Kelly, imposing unincorporated business tax upon the income received by him from his activities as a data processing consultant during the years 1963, 1964 and 1965 and accordingly issued a Notice of Deficiency in the sum of \$1,297.91.

3. Petitioner, Joseph H. Kelly, was an independent data processing consultant during the years 1963, 1964 and 1965. He specialized in computer techniques, computer equipment evaluation and selection and computer language evaluation and selection. He developed computer technique manuals. He did not do programming. He advised and guided his clients concerning the efficiencies and effectiveness of their overall computer complexes. His corporate clients included I.B.M., Sperry Rand Corporation, Prentiss Hall Corporation and O.E. McIntyre.

4. Petitioner, Joseph H. Kelly, received a B.S. Degree in physics and math from Hobart College in 1950. He was employed by Remington Rand Corporation from 1951 to 1961. He gained his expertise in the area of computers and data processing through on the job training while employed by said corporation. He became an independent data processing consultant in 1961. He is listed in "Who's Who in Data Processing" and is a member of the Association of Computing Machines.

5. During the years 1963, 1964 and 1965, all of petitioner, Joseph H. Kelly's income as a data processing consultant was derived from personal services rendered. Capital was not a material income producing factor.

6. There were no university degrees in the data processing field at the time petitioner, Joseph H. Kelly entered it. There are now many universities offering degrees in computer science.

CONCLUSIONS OF LAW

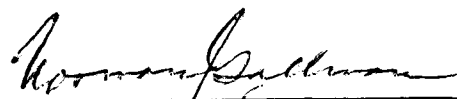
A. That the activities of petitioner, Joseph H. Kelly, as a data processing consultant during the years 1963, 1964 and 1965, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

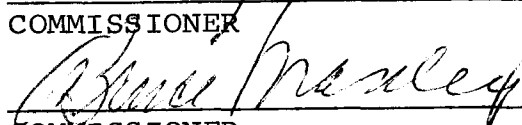
B. That the aforesaid activities of petitioner, Joseph H. Kelly, during the years 1963, 1964 and 1965 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

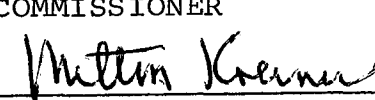
C. That the petition of Joseph H. Kelly is denied and the Notice of Deficiency issued January 22, 1968, is sustained.

DATED: Albany, New York
February 15, 1973

STATE TAX COMMISSION



COMMISSIONER


COMMISSIONER


COMMISSIONER