

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEIL F. MICHELSEN and SUZANNE MICHELSEN

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) 1969, 1970  
and 1971

State of New York  
County of Albany

Janet Mack , 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 17th day of October , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Neil F. Michelsen  
and Suzanne Michelsen (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. & Mrs. Neil F. Michelsen  
129 Secor Lane  
Pelham, New York 10803  
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~~  
~~of~~) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (~~representative of~~) petitioner.

Sworn to before me this

17th day of October , 1974

Martha Suarez

Janet Mack



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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

~~CHIEF OF BUREAU~~  
Mario A. Procaccino  
~~CHIEF OF BUREAU~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**October 17, 1974**

**Mr. & Mrs. Neil F. Michelsen**  
**129 Secor Lane**  
**Pelham, New York 10803**

**Dear Mr. & Mrs. Michelsen:**

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,

**L. Robert Leisner**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

## STATE TAX COMMISSION

Petitioners, Neil F. Michelsen and Suzanne Michelsen, have filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970 and 1971. (File No. 1-88074968).

ISSUE

## FINDINGS OF FACT

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1969, 1970 and 1971 was issued on November 26, 1973 against petitioner, Suzanne Michelsen.

3. Petitioner, Suzanne Michelsen, operated a nursery school during the years 1969, 1970 and 1971. She and her husband, Neil F. Michelsen, claim that the income derived from the operation of said school was not subject to the unincorporated business tax under section 703(c) of the Tax Law. They claim that teaching is a profession and that Suzanne Michelsen taught full time in the school, that capital was not a material income producing factor and that 80% or more of the income was actually derived from Mrs. Michelsen's personal services. Petitioners claim further that Mrs. Michelsen devised the teaching program of the nursery school, guided and directed the work of her assistants, consulted, advised and reported to the parents and interviewed the parents and children prior to admission.

4. On audit, the Income Tax Bureau found that since the salaries paid to assistants for 1969, 1970 and 1971 were in excess of 20% of the gross income, the amount of gross income available for petitioner, Suzanne Michelsen's personal services was reduced to less than the 80% fixed by statute for the exemption of a profession from the unincorporated business tax. Petitioners, Neil F. Michelsen and Suzanne Michelsen, failed to submit any proof to contradict this finding of the Income Tax Bureau.

#### CONCLUSIONS OF LAW

A. That petitioners, Neil F. Michelsen and Suzanne Michelsen, failed to substantiate their claim that 80% or more of the income derived from the operation of the nursery school during the years 1969, 1970 and 1971 was derived from personal services rendered by Mrs. Michelsen.

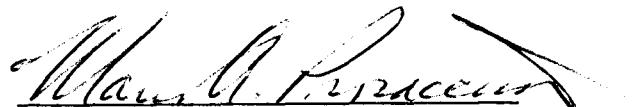
B. That the income derived by petitioners, Neil F. Michelsen and Suzanne Michelsen, from the operation of a nursery school during the years 1969, 1970 and 1971 was subject to the unincorporated business year. (Hewitt v. Bates 297 N.Y. 239, 1948)

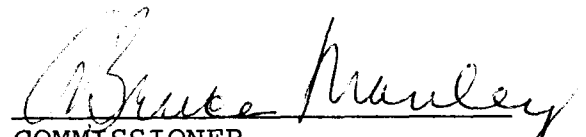
C. That the petition of Neil F. Michelsen and Suzanne Michelsen, is denied, and the determination of the deficiency in unincorporated business tax is sustained.


D. That, pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York  
October 17, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER