

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD J. O'CONNOR

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 ~~(*)~~ 23 of the
Tax Law for the Year(s) 1967, 1968, 1969
and 1970.

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 18th day of July, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Richard J.

O'Connor ~~(representative of the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Richard J. O'Connor

7 Pleasant View Avenue
Lakewood, New York 14750

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 the)~~
~~XX~~ 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

18th day of July, 1974.

Janet Mack

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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a Refund of Unincorporated Business :
Taxes under Article(x) 23 of the
Tax Law for the Year(s) 1967, 1968, 1969
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State of New York
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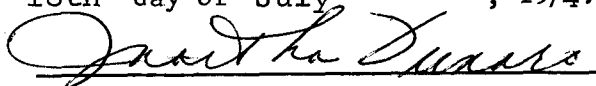
Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 18th day of July , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon H. James Abdella,
Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: H. James Abdella, Esq.
Johnson, Peterson, Tener & Anderson
Bankers Trust of Jamestown Building
Jamestown, New York 14701
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

18th day of July , 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
July 18, 1974

Mr. Richard J. O'Connor
7 Pleasant View Avenue
Lakewood, New York 14750

Dear Mr. O'Connor:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (a) **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
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD J. O'CONNOR	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967, 1968, 1969 and	:	
1970.	:	

Petitioner, Richard J. O'Connor, 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 1967, 1968, 1969 and 1970. (File No. 0-56645263). A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on November 15, 1973, at 9:50 A.M. Petitioner appeared by H. James Abdella, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, Richard J. O'Connor's activities as a claims adjuster during the years 1967, 1968, 1969 and 1970, constitute the practice of a profession, exempt from the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Richard J. O'Connor, and his wife filed New York State income tax resident returns for the years 1967, 1968, 1969 and 1970. He did not file New York State unincorporated business tax returns for said years.

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Richard J. O'Connor, imposing unincorporated business tax upon the income received by him from his activities as a claims adjuster during the years 1967, 1968, 1969 and 1970. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,786.82.

3. Petitioner, Richard J. O'Connor, attended the University of Buffalo for two-and-a-half years. He took night courses in insurance at the Millard Fillmore College at the University of Buffalo. He took a correspondence course through New Amsterdam Casualty Company. From 1949 to 1962, petitioner was an adjuster. Since 1962, he has been licensed by the New York State Insurance Department as an independent claims adjuster.

4. In his activities as an independent claims adjuster during the years 1967, 1968, 1969 and 1970, petitioner, Richard J. O'Connor, received assignments from insurance carriers. Upon receipt of an assignment, he talked to the insured, various claimants and witnesses. Based on his findings, petitioner then gave the insurance carrier a factual appraisal of the situation and an opinion as to the carrier's liability. Petitioner's activities required some knowledge of the law, particularly negligence law.

5. Petitioner, Richard J. O'Connor's income as an independent claims adjuster during the years 1967, 1968, 1969 and 1970, was derived solely from personal services rendered. Capital was not a material income producing factor. Petitioner did not advertise, had no employees and had an office in his home for record keeping only.

6. Petitioner, Richard J. O'Connor, contends that in his activities as a claims adjuster, he renders objective opinions to his clients in the same manner as attorneys. He further contends that there is so much similarity between the services of attorneys and his own work that under the equal protection guarantees of the State and Federal constitutions he is entitled to the same exclusion from the unincorporated business tax that is afforded to attorneys and other professionals. Finally, petitioner contends that his exclusion from the category of a professional is arbitrary and represents unreasonable and unfair discrimination without due process of law, in violation of Article 1, section 6 of the New York State Constitution and the Fourteenth Amendment of the U. S. Constitution.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Richard J. O'Connor, as a claims adjuster during the years 1967 through 1970, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the unincorporated business tax under section 703(c) of the Tax Law. Ottis v. Graves, 259 A.D. 957, (insurance broker); Bowser v. Bates, 279 A.D. 956, (adjuster of marine losses).

B. That the State Tax Commission is without jurisdiction to declare a statute unconstitutional, but is of the belief that the statute in question is neither unconstitutional nor in violation of the "equal protection" clauses of the State and Federal constitutions.

C. That the petition of Richard J. O'Connor is denied, and the Notice of Deficiency issued June 26, 1972, is sustained.

D. Pursuant to the Tax Law, interest shall be added to the amount due until paid.

DATED: Albany, New York
July 18, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER