

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID RUDIN

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) 1964, 1965, :
1966 and 1967.

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 21st day of June, 1974, 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:

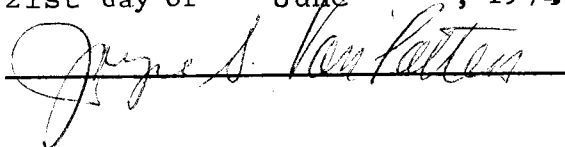
Mr. David Rudin
377 North Broadway, Apt. #311
Yonkers, New York 10701

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

21st day of June, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

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

DATED: Albany, New York
June 21, 1974

Mr. David Rudin
377 North Broadway, Apt. #311
Yonkers, New York 10701

Dear Mr. Rudin:

Please take notice of the **DECISION**
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 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	:	
DAVID RUDIN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964, 1965, 1966 and	:	
1967.	:	

Petitioner, David Rudin, filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964 through 1967. (File No. 84608496). A formal hearing was scheduled to be held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on Friday, September 14, 1973, at 9:15 A.M. The case was then submitted for decision on information contained in the file.

ISSUE

Did the activities of petitioner, David Rudin, as a corporation and management consultant during the years 1964 through 1967, constitute the practice of a profession, exempt from the imposition of the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, David Rudin, filed New York State income tax resident returns for the years 1964 through 1967. He did not file New York State unincorporated business tax returns for said years.

2. On April 11, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, David Rudin, imposing unincorporated business tax upon the income received by him from

his activities as a corporation and management consultant during the years 1964 through 1967. It also imposed a penalty for failure to file New York State unincorporated business tax returns for said years in the sum of \$958.58. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$5,398.89.

3. Petitioner, David Rudin, was a corporation and management consultant during the years 1964 through 1967. His activities during said years consisted of helping attorneys and accountants to do tax planning. Petitioner's activities frequently included the rendering of business management advice and services in the creation and preparation of pension and profit sharing plans. Petitioner, David Rudin, claimed that these activities required knowledge and experience in tax matters, which he acquired during his 25 years as the senior member of N. R. Caine & Co., C.P.A.'s, in charge of its tax department. Petitioner also claimed that he was a graduate of law as well as accounting school.

4. Petitioner, David Rudin's income as a corporation and management consultant during the years 1964 through 1967 was derived solely from personal services rendered. Capital was not a material income producing factor. Petitioner did not advertise and did not have any employees.

CONCLUSIONS OF LAW

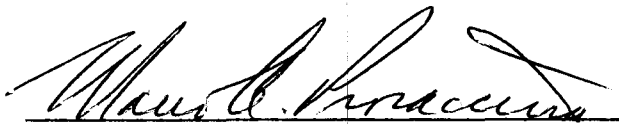
A. That the activities of petitioner, David Rudin, as a corporation and management consultant during the years 1964 through 1967, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

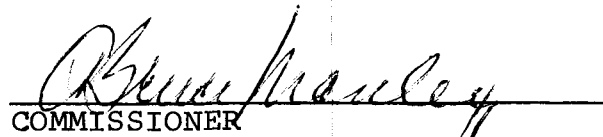
B. That the aforesaid activities of petitioner, David Rudin, during the years 1964 through 1967, constituted the carrying on of an unincorporated business, and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

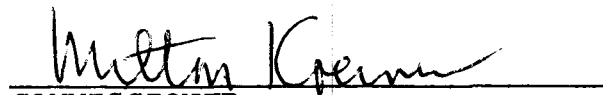
C. That the petition of David Rudin is denied and the Notice of Deficiency issued April 11, 1969, is sustained.

DATED: Albany, New York
June 21, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER