

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY H. KAPLAN

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) 1961 and 1962:

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 12th day of March, 1976, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Stanley H. Kaplan

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

Mr. Stanley H. Kaplan
3931 Bedford Avenue
Brooklyn, New York

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

12th day of March, 1976.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY H. KAPLAN

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 (ss) 23 of the
Tax Law for the Year(%) 1961 and 1962.:

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 12th day of March, 1976, she served the within
Notice of Decision ~~xxx xxx xxx xxx~~ by (certified) mail upon Sidney Meyers, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sidney Meyers, Esq.
51 Chambers Street
New York, New York 10007

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

day of , 19 .

Mary Tracy

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
March 12, 1976

Mr. Stanley H. Kaplan
3931 Bedford Avenue
Brooklyn, New York

Dear Mr. Kaplan:

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

Please take further notice that pursuant to
Section ~~xxx~~ 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,


Paul B. Coburn
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STANLEY H. KAPLAN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961 and 1962.	:	

Petitioner, Stanley H. Kaplan, 3931 Bedford Avenue, Brooklyn, New York, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962. (File No. 2-7633746). A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 7, 1970, at 11:00 A.M., and on January 8, 1970, at 9:30 A.M. Petitioner appeared by Sidney Meyers, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Was petitioner, Stanley H. Kaplan, engaged in a profession and thus exempt from the unincorporated business tax?

FINDINGS OF FACT

1. By a Notice of Deficiency and a Statement of Audit Changes, both dated June 6, 1966, the Department assessed unincorporated business taxes against the petitioner for the years 1961 and 1962 in the amounts of \$238.97 and \$349.15 respectively, to a total of \$588.12 as of that date.

2. Petitioner asserts that his income was earned in his profession as a teacher and was not lawfully subject to tax, except for a portion earned as a writer, which also was professionally exempt. (The petition, sworn to August 25, 1966, stated only that his activities and income in the years under consideration were not lawfully subject to the tax.)

3. Petitioner was the proprietor of a private tutoring service conducted in premises at 1701 Quentin Road, Brooklyn, and as to tutoring also at his home in Brooklyn.

The courses offered were sequences of classes of instruction by group tutoring in mathematics, science and English as preparation for Regents examinations, courses preparatory to taking Scholastic Aptitude Tests which at the time served as one of the criteria for admission to colleges, and private tutoring. Courses of instruction were supplemented by mimeographed course materials for study and by tape recordings of class instruction which the students could have played back to them on equipment provided.

4. Petitioner did all of the individual tutoring at his home. The group courses which were held at the 1701 Quentin Road address, consisted of three and one-half hour sessions during which tests were given for one-half hour, English was taught for one hour, math and science for an hour and a half. Petitioner taught the math-science lessons but he employed seven women to teach the English sessions. The women were paid by the hour for their services. The group sessions ran from September to May. Petitioner's private tutoring continued throughout the summer months. Stanley H. Kaplan also gave guidance counseling on the selection of colleges to those students who enrolled in the Scholastic Aptitude Test Preparatory Course.

5. Payment for the Regents and Scholastic Aptitude preparation courses were by fees charged for the course; an hourly fee was charged for private tutoring. Literature and the use of the tapes were provided students in the group courses without additional charges.

6. Petitioner received \$3,350.00 in 1961 and \$1,370.00 in 1962 as fees for manuscripts he did for Barron's Educational Series, Inc., publishers of Regents Questions and Answers; the manuscripts consisted of a set of Regents examinations questions to which he added the answers with explanations. For each examination so analyzed, he received a fee of \$150.00. The examinations he so treated were in mathematics and science.

7. Petitioner's gross receipts, including fees for manuscripts; amounted to \$56,980.00 in 1961 and \$66,034.00 in 1962. The payroll for all employees in 1961 was \$17,920.00 and in 1962 \$20,875.00. Mr. Kaplan employed secretarial help and boys who were engaged by the hour to repair and maintain equipment, as well as the English instructors. It was contended that a portion of the salary paid to teachers was for non-professional work such as work as a secretary or typist. No separable employment in a different capacity was proved. The petitioner did not produce any payroll records although a schedule of salaries for all employees for the two years in question was submitted by petitioner's accountant at the formal hearing.

8. The gross income (except for the payments for the manuscripts) consisted entirely of students' fees paid and such gross income, as it is found, was derived from the personal services of petitioner, from the personal services of staff instructors and from the supplying of the use of the study materials, literature and tapes to the students.

9. Capital was not a material income-producing factor.

CONCLUSIONS OF LAW

A. That petitioner was not engaged in the practice of the profession of teaching in accordance with the meaning and intent of section 703(c) of the Tax Law.

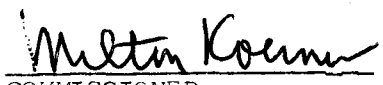
B. That petitioner was carrying on an unincorporated business during the years 1961 and 1962.

C. The petition is denied and the determination of the deficiency in income tax is sustained.

DATED: Albany, New York
March 12, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER