

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH LINDER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year ~~(XXXXXX)~~ 1967.:

State of New York
County of Albany

Carmen Mottolese , 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 1st day of October , 1976 , she served the within
Notice of Decision by (certified) mail upon Joseph Linder

~~(XXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Joseph Linder
25 Roosevelt Terrace
Bayonne, New Jersey 07002

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(XXXXXX)~~
~~(XXXXXX)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

1st day of October , 1976.

Carmen Mottolese

Janet Brack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

October 1, 1976

TELEPHONE: (518) **457-3850**

Mr. Joseph Linder
25 Roosevelt Terrace
Bayonne, New Jersey 07002

Dear Mr. Linder:

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

Please take further notice that pursuant to
Section(**X**) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|--|
| In the Matter of the Petition | : | |
| of | : | |
| JOSEPH LINDER | : | |
| for a Redetermination of a Deficiency | : | |
| or for Refund of Unincorporated Business | : | |
| Taxes under Article 23 of the Tax Law | : | |
| for the Year 1967. | : | |

DECISION

Petitioner, Joseph Linder, 25 Roosevelt Terrace, Bayonne, New Jersey 07002, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for 1967. (File No. 7-73087122). A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 6, 1976. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUES

I. Was the nature of the activities performed by the petitioner that of an actuary subject to the unincorporated business tax?

II. Was the income from the separate activities so co-mingled that the amount of income received from each activity could not be identified?

FINDINGS OF FACT

Petitioner filed an amended unincorporated business tax return for 1967, showing 40% of his net business income subject to the unincorporated business tax. The statutory deduction and exemption allowed under sections 708(a) and 709(1) of Article 23 of the Tax Law, afforded the petitioner a zero taxable business income. Upon audit, the Income Tax Bureau issued a deficiency holding 100% of his net business income subject to the unincorporated business tax.

Petitioner was a partner in the firm of Wolfe, Corcoran and Linder and its predecessor firm of S. H. and Lee J. Wolfe, from 1939 to 1965. During this period, the partnerships paid unincorporated business taxes on 40% of their total income, which represented fees earned from their actuarial activities.

During 1966, the petitioner withdrew from the partnership and resumed his business activities as a sole proprietor.

Petitioner asserts that 40% of his business income was from his activities as an actuary and 60% of such income was from his activities as a public accountant, and that his activities were essentially the same as they were when he was a member of the partnership. The petitioner further contends that he should be taxed in the same manner as the partnerships with which he was formerly associated.

Petitioner's clients were strictly insurance companies, who basically retained him to examine their loss reserves.

Petitioner contends that his business activities required a mixture of accounting and actuarial skills, and that these skills were employed simultaneously.

On the original and amended 1967 nonresident returns filed March 20, 1968 and April 9, 1969, respectively, the petitioner called himself an actuary.

On the amended 1967 unincorporated business tax return, the petitioner labeled the nature of his business as that of an actuary.

CONCLUSIONS OF LAW

The nature of the business activities performed by the petitioner could not be distinguished or segregated as being that of an accountant or that of an actuary. The fees earned were as a result of services performed which required a combination of skills and knowledge in both fields. Accordingly, an individual practicing a recognized profession and a taxable unincorporated business in connection with that profession, is subject to the unincorporated business tax on the entire income of the business and profession combined, since both activities could not be individually identified and segregated. (See example 41 of the Unincorporated Business Tax Regulations under Article 16-A of the Tax Law; also see section 203.11(b)(4) of the Unincorporated Business Tax Regulations under Article 23 of the Tax Law).

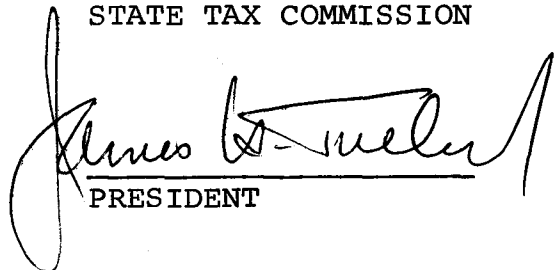
In addition, no documentary evidence or valid legal argument was presented to justify the petitioner's contention that he should be allowed to report his taxable unincorporated business income in the same manner as in the firm of Wolfe, Corcoran and Linder.

The petitioner's total business income is subject to the unincorporated business tax within the meaning and intent of section 703 of Article 23, of the Tax Law.

Petition of Joseph Linder is denied and the Notice of Deficiency issued April 14, 1971 is sustained.

DATED: Albany, New York
October 1, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER