

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT I ZINMAN

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) 1965, 1966, 1967.

State of New York
County of Albany

Margaret A. Groelz, 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 29th day of April, 1976, she served the within
Notice of Decision (~~on Determination~~) by (certified) mail upon Robert I.

Zinman (~~XXXXXXXXXXXX~~ representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Robert I. Zinman
25-29 147th Street
Flushing, New York 11354

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

29th day of April, 1976.

Janet Mack

Margaret A. Groelz

STATE OF NEW YORK
STATE TAX COMMISSION

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ROBERT I ZINMAN

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a Refund of Unincorporated Business :
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1965, 1966, &
1967.

State of New York
County of Albany

Margaret A. Groelz

, 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 29th day of April , 1976, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Alexander S.
Moser, Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Alexander S. Moser, Esq.
One Liberty Street
New York, 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

29th day of April , 1976.

Margaret A Groelz

Janet Macch



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
April 29, 1976

Mr. Robert I Zinman
25-29 147th Street
Flushing, New York 11354

Dear Mr. Zinman:

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,


Paul B Coburn,
Supervising Tax
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT I. ZINMAN	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1965, 1966 and 1967.	:	

Petitioner, Robert I. Zinman, 25-29 147th Street, Flushing, New York 11354, 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 1965, 1966 and 1967. (File No. 78749721). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 17, 1972, at 9:15 A.M. Petitioner appeared by Alexander S. Moser, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq. of Counsel).

ISSUE

I. Did petitioner, Robert I. Zinman's activities as a shorthand reporter during the years 1965, 1966 and 1967 constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioner, Robert I. Zinman, and his wife filed New York State income tax resident returns for the years 1965 and 1966 and a New York State combined income tax return for the year 1967. He did not file New York State unincorporated business tax returns for said years.

2. On May 25, 1970 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert I. Zinman, imposing unincorporated business tax upon the income received by him as a shorthand reporter during the years 1965, 1966 and 1967. It also imposed a penalty of \$187.87 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,077.01.

3. Petitioner, Robert I. Zinman, was a shorthand reporter during the years 1965, 1966 and 1967 in the New York metropolitan area. He rendered in excess of 95% of his services for Adler Reporting Service, an agency in the reporting field. It assigned reporting jobs to him. He was paid on a per page basis. He was free to work for other agencies and on occasion did so. It did not withhold Federal or New York State income taxes or social security tax from the compensation paid to him. It did not cover him for unemployment insurance. He did not receive vacation pay. He was not reimbursed for his expenses, other than

travel expenses outside of New York City. He paid \$30.00 a month to Adler Reporting Service for desk space, the use of a telephone and the use of a dictating machine. He deducted his business expenses on Schedule "C" of his Federal income tax returns. Adler Reporting Service did not exercise any substantial direction or control over his reporting activities and techniques or over the time he devoted to reporting.

4. Petitioner, Robert I. Zinman, upon graduation from high school, attended Merchants and Bankers Business School for one year, where he was trained as a shorthand reporter. He then attended Heffley & Browne Secretarial School for one additional year, where he received instruction in shorthand reporting, English and court terminology. He subsequently attended night courses in shorthand reporting in order to increase his speed as a reporter. He was employed by the Unemployment Insurance Division of the Department of Labor of the State of New York as a hearing reporter from 1951 to 1954. He was employed by the New York-New Jersey Waterfront Commission as a hearing reporter from 1954 to 1957. In 1958 he became a free-lance hearing reporter rendering services primarily for Adler Reporting Service. He was never licensed by the State of New York as a certified shorthand reporter pursuant to Article 151 of the Education Law of the State of New York. He was a member of the Federation of Shorthand Reporters, Local 335, Office and Professional Employees

International Union, AFL-CIO. In order to become a member of the Union he was required to pass a test similar to the test given by the Education Department to qualify certified shorthand reporters.

5. Petitioner, Robert I. Zinman's business activities as a shorthand reporter during the years 1965, 1966 and 1967 consisted of stenographically reporting court proceedings, references, commissions, conventions, deliberative assemblies, administrative hearings before municipal and state agencies, examinations before trial and stockholder meetings. He made stenographic notes of the proceedings and then dictated the notes or gave the notes to a note reader who typed the transcript. He then proofread the completed transcript.

6. Petitioner, Robert I. Zinman's income as a shorthand reporter during the years 1965, 1966 and 1967 was derived solely from personal services rendered. Capital was not a material income producing factor.

7. The sole difference between petitioner, Robert I. Zinman, and a certified shorthand reporter during the years 1965, 1966 and 1967, was that a certified shorthand reporter was entitled to use the title "C.S.R." after his name. The license as a certified shorthand reporter bestowed absolutely no other rights, benefits, privileges or obligations upon the holder thereof.

CONCLUSIONS OF LAW


A. That 20 NYCRR 203.11(b) (1) (ii) (b) provides that certified shorthand reporting constitutes the practice of a profession. There is no significant difference between applicant, Robert I. Zinman, and a certified shorthand reporter other than the fact that a certified shorthand reporter is licensed by the New York State Education Department. The State Tax Commission cannot deny the petitioner a professional exemption merely because he has failed to comply with the licensing statute. Kahn and Jacobs v. State Tax Commission, 39 A.D. 2d 278, 333 N.Y.S. 2d 957 (3rd Dept., 1972), affirmed 33 N.Y. 2d 549, 347 N.Y.S. 2d 439. We therefore conclude that petitioner, Robert I. Zinman's activities as a shorthand reporter during the years 1965, 1966 and 1967 constituted the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of Robert I. Zinman is granted and the Notice of Deficiency issued May 25, 1970, is cancelled.

DATED: Albany, New York
April 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER