

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND DIANA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of **Unincorporated Business**
Taxes under Article (X) 23 of the
Tax Law for the Year(s) ~~xxxxxx~~
1968, 1969 and 1970.

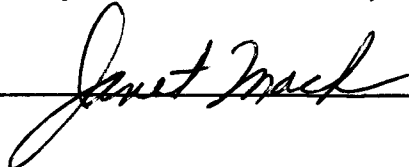
State of New York
County of Albany

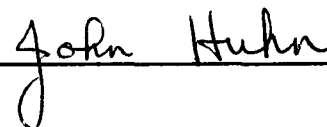
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Raymond Diana
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Raymond Diana
137-53 Francis Lewis Boulevard
Laurelton, New York 11413
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 (~~representative of~~
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

3rd day of October, 1977







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

October 3, 1977

Mr. Raymond Diana
137-53 Francis Lewis Boulevard
Laurelton, New York 11413

Dear Mr. Diana:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(x) 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywat
Hearing Examiner

cc: ~~Redacted~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RAYMOND DIANA : DECISION
:
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1968, 1969 and 1970. :

Petitioner, Raymond Diana, residing at 137-53 Francis Lewis Boulevard, Laurelton, New York 11413, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970 (File No. 13143).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 29, 1977 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioner's activities in the field of labor relations constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. During the years 1968, 1969 and 1970, petitioner was retained on a fee basis by principals such as school districts, city councils and an association of building inspectors. Petitioner helped these principals to achieve their objectives in the field of labor relations regarding employment contracts, working conditions and labor disputes.

2. During the years 1968, 1969 and 1970, petitioner acted as an advocate for the causes of his principals and not as an impartial mediator or arbitrator. He served his principals in the capacity of consultant and not an employee. The services he performed did not require that he be licensed to practice under the New York State Education Law.

3. Petitioner majored in mathematics at St. John's University and graduated in 1931 with a B.S. degree. He gained his skill and knowledge of labor relations from his experience as Deputy Commissioner of Labor for New York City from 1957 to 1965. He lectured at various colleges on the subject "Labor Relations in the Public Service". Petitioner helped to draft labor legislation and also helped to evolve the present New York City labor relations system.

4. Petitioner contended that: there was no specific title for the services that he performed; that he was involved in the

field of labor relations at the highest level; and that the sum total of what he did was professional in nature.

CONCLUSIONS OF LAW

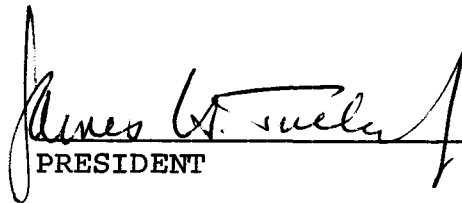
A. That the activities of petitioner, Raymond Diana, during the years 1968, 1969 and 1970, while requiring special knowledge and experience, dealt primarily with the conduct of business itself on behalf of his principals rather than the application of a separately developed art or science; and that such activities did not constitute the practice of a profession exempt from imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

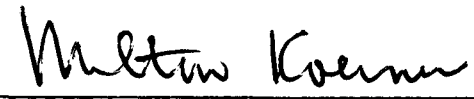
B. That the aforesaid activities of petitioner, Raymond Diana, during the years 1968, 1969 and 1970, constitutes the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law. Therefore, his income therefrom is subject to the unincorporated business tax.

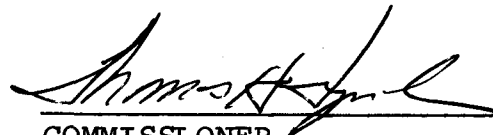
C. That the petition of Raymond Diana is denied and the Notice of Deficiency issued March 31, 1975 in the amount of \$1,715.92, is sustained together with such additional interest as may be legally owing.

DATED: Albany, New York
October 3, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER