

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL L. LIONEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of **Unincorporated Business** :  
Taxes under Article ~~(\*)~~ 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1971 and 1972.

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 Daniel L. Lionel

(~~representative of~~) the petitioner in the within proceeding,

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

Mr. Daniel L. Lionel  
25 Azalea Drive  
Syosset, New York 11791

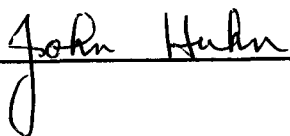
and by depositing same enclosed in a postpaid, properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~the~~) 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

3rd day of October, 1977.

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

October 3, 1977

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

Mr. Daniel L. Lionel  
25 Azalea Drive  
Syosset, New York 11791

Dear Mr. Lionel:

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 **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 Chyrywaty  
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DANIEL L. LIONEL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971 and 1972.	:	

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Petitioner, Daniel L. Lionel, residing at 25 Azalea Drive, Syosset, New York 11791, 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 1971 and 1972 (File No. 12219).

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 30, 1977 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUES

I. Whether the income derived from petitioner's activities as an advertising consultant during the years 1971 and 1972 was subject to the unincorporated business tax, or did said activities constitute the practice of an exempt profession.

II. Whether petitioner's consulting services were performed as an employee or as an independent contractor.

FINDINGS OF FACT

1. Petitioner performed services as an employee for Cowles Communications, Inc. from January 1, 1971 through September 3, 1971. During this same period, he also performed advertising and consulting services as an independent contractor for Long Island Commercial Review, Inc.

2. From September 4, 1971 to December 31, 1972, petitioner was a bona fide employee of Long Island Commercial Review, Inc. and, during this same period, he performed consulting services as an independent contractor for Cowles Communications, Inc.

3. Petitioner worked for Cowles Communications, Inc. under an employment contract. Before this contract expired, it was superseded by another agreement on September 3, 1971. The latter agreement provided for two payments totaling two-thirds of the salary due petitioner for the remaining period of the employment contract. It also provided that for the remaining contract period, petitioner was to perform advertising and consulting services for his former employer. Petitioner performed such consulting services whenever he was called upon to do so.

4. Petitioner listed his occupation as "Advertising Consultant" on his New York State personal income tax returns for the years 1971 and 1972. He reported thereon the income received as an employee as wages, and the income received as a consultant as business income. Petitioner filed Federal Schedule "C" and Federal self-employment schedules for both years. Petitioner did not file New York State unincorporated business tax returns for the years in question.

5. Petitioner contended that, as an advertising consultant, he was engaged in the practice of a profession because his background included writing a weekly newspaper column on advertising, and lecturing on the subject at Columbia University and at Brooklyn College. He also contended that all consulting income was derived from his personal services and that capital was not a material income producing factor.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner, Daniel L. Lionel, as an advertising consultant during the years 1971 and 1972, 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 constituted the carrying on of an unincorporated business, and that 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 income received by petitioner during the years 1971 and 1972 which was derived from his activities as an advertising consultant constituted income from the carrying on of an unincorporated business, and was not compensation received from services performed as an employee exempt from the imposition of the unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

D. That the petition of Daniel L. Lionel is denied and the Notice of Deficiency issued September 29, 1975 in the amount of \$1,525.99 is sustained.

DATED: Albany, New York

October 3, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER