

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GEORGE L. MERZ, JR. & SHIRLEY MERZ

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~DECEMBER(S)~~ :
1967, 1968, 1969, and 1970

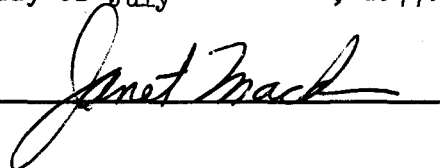
State of New York
County of Albany

Marsina Donnini, 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 7th day of July, 1977, she served the within
Notice of Decision by (certified) mail upon George L. Merz, Jr. & Shirley
Merz ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. George Merz
RD #2, East Hill Road
Homer, New York 13077
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)~~
~~XXXXXX~~ 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

7th day of July, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GEORGE L. MERZ, JR. SHIRLEY MERZ

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(9)~~ 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1967, 1968, 1969, and 1970

State of New York
County of Albany

Marsina Donnini, 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 7th day of July, 1977, she served the within

Notice of Decision by (certified) mail upon Laurie Rockett, Esq. &

Greenbaum, Wolff & Ernest (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Laurie Rockett, Esq. &
Greenbaum, Wolff & Ernest
437 Madison Avenue
New York, New York 10022

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

7th day of July, 1977.

Marsina Donnini

Janet Mack



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

July 7, 1977

TELEPHONE: (518) 497-1723

Mr. & Mrs. George Marx
RD #2, East Hill Road
Homer, New York 13077

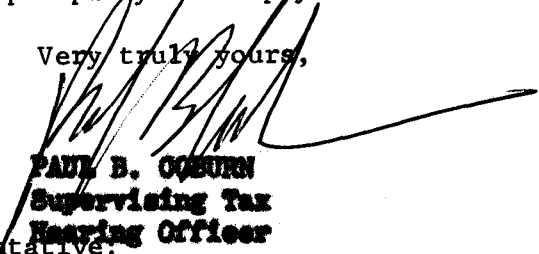
Dear Mr. & Mrs. Marx:

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

Please take further notice that pursuant to
Section(2) **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,


PAUL B. O'CONNOR
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE L. MERZ, JR. & SHIRLEY MERZ	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968, 1969 and 1970.	:	

The petitioners, George L. Merz, Jr. and Shirley Merz, RD #2, East Hill Road, Homer, New York 13077, 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 1967 through 1970. (File No. 00505).

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 10, 1976, at 9:15 A.M., before Solomon Sies, Hearing Officer. The petitioners appeared by Greenbaum, Wolff & Ernst, Esqs., (Nathan Dershowitz, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

ISSUE

Whether or not the petitioner, George L. Merz, Jr., a marriage and family counselor and a member of the American Association of Marriage and Family Counselors, is engaged in the practice of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. The petitioners, George L. Merz, Jr. and Shirley A. Merz, his wife, filed resident income tax returns for the years 1967 through 1970. Mr. Merz reported income received as an independent contractor from his activities as a marriage and family counselor. Mrs. Merz was an employee of her husband during the years in issue. The petitioner, George L. Merz, Jr., did not file any unincorporated business tax returns for the years in issue.

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners for the years 1967 through 1970, imposing unincorporated business tax in the amount of \$2,941.83 and, accordingly, issued a Notice of Deficiency therefore on the ground that the activities of the petitioners constitute the carrying on of an unincorporated business subject to unincorporated business tax.

3. The petitioner, George L. Merz, Jr., received a Master's Degree in Sociology from Cornell University in 1959. He was in the Ph.D. program at Syracuse University, taking courses in the area of family relations and psychology. He finished all his course work in 1965. He completed his Ph.D. candidacy status in Sociology at Syracuse University in 1969 but did not receive his Ph.D. degree. From 1965 to 1969 he undertook advanced clinical training in marriage counseling and psychotherapy with one of the staff members of the Dept. of Psychiatry, University of Pennsylvania Medical College. In addition, Mr. Merz received training in clinical supervision at the Eastern Institution of Transactional Analysis and Gestalt, located in Philadelphia, Pennsylvania. He also had training in group psychotherapy under Dr. Hobart Mowrer, past president of the American Psychological Association. He had training in behavior therapy, individual and group therapy under Dr. Willard Mainord, associate professor of psychology at the University of Kentucky.

4. Mr. Merz is a clinical member of the American Association of Marriage and Family Counselors (AAMFC), a clinical member of the National Alliance for Family Life, and a clinical member of the New York State Association of Marriage and Family Counselors.

5. The AAMFC is a national association of nearly 4,000 professional marriage counselors with members throughout the United States and Canada. In order to become a clinical member of the Association, a member must meet the following requirements: (a) Recognized professional education with a minimum of an earned Master's Degree from an accredited educational institution in an appropriate behavioral science field, mental health discipline, or recognized helping profession; (b) 200 hours of approved supervision of (1) the practice of marriage and family counseling, ordinarily to be completed in a 2-3 year period, of which at least 100 hours must be in individual supervision; (2) 1000 hours of clinical experience in the practice of marriage and family counseling under approved supervision involving at least 50 different cases. Mr. Merz surpassed the minimum requirements of the AAMFC when he became a member. In 1962, the AAMFC promulgated a Code of Professional Ethics, requiring strict compliance with such Code on the part of its members, and provides fully for the self-regulation of the profession. The AAMFC is a national accrediting authority for graduate professional programs for the training of marriage and family counselors. The Association publishes the Journal of Marriage and Family Counseling, a quarterly publication.

6. Some of the universities that offer graduate professional degree programs for the training of marriage and family counselors are Columbia University, Syracuse University, Purdue, Florida State University, California State University, Temple University, University of Connecticut and University of Wisconsin. California, Michigan, Nevada, Utah, New Jersey and Georgia now license marriage and family counselors.

7. During the years in issue, the petitioner, George L. Merz, Jr., was engaged as an independent marriage and family counselor providing guidance, counseling and instruction in the alleviation of marital and family discord, helping married couples to avoid or to adjust to divorce, or helping a couple prepare for marriage. He received referrals from physicians, lawyers, clergymen and satisfied clients.

8. More than 80% of the gross income of the petitioner, George L. Merz, Jr., is derived from the personal services rendered by him. Capital is not an income producing factor.

CONCLUSIONS OF LAW

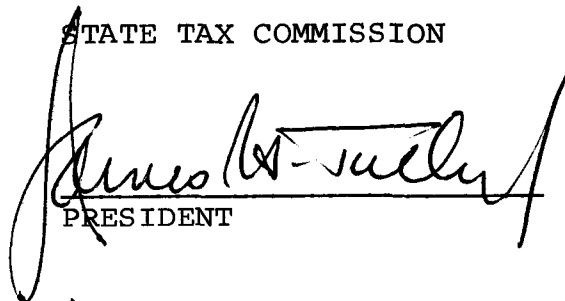
A. That the activities of the petitioner, George L. Merz, Jr., as a marriage and family counselor during the years in issue constituted the practice of a profession and are not deemed to be an unincorporated business within the intent and meaning of section 703(c) of the Tax Law.

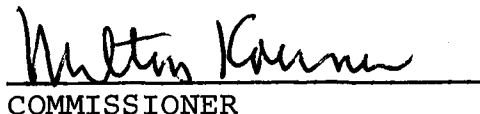
B. That the income derived by the petitioner, George L. Merz, Jr., during the years in issue, as an independent marriage and family counselor, is exempt from the imposition of the unincorporated business tax.

C. That the petition is granted and the Statement of Audit Changes and Notice of Deficiency be and the same are hereby cancelled.

DATED: Albany, New York
July 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER