

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
IRVING NOVICK

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) ~~xxxxxxx~~ :
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 24 day of August, 19 77, she served the within
Notice of Decision by (certified) mail upon Irving Novick
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Irving Novick
2526 Yates Avenue
Bronx, New York 10469
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~~
~~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

24 day of August

, 19 77

Marsina Donnini

Just Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
IRVING NOVICK

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) ~~1968, 1969 and 1970~~ :
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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Mark Salzman, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mark Salzman, CPA of Gassman & Gassman, CPA Five Hundred Fifth Avenue New York, New York 10036 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

24 day of August, 1977.

Marsina Donnini

Janet Macch



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

August 24, 1977

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

Mr. Irving Novick
2526 Yates Avenue
Bronx, New York 10469

Dear Mr. Novick:

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 CHYRYWATY
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Irving Novick, residing at 2526 Yates Avenue, Bronx, New York 10469, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1969, and 1970 (File No. 00545).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, On October 28, 1976, at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Mark Salzman, C.P.A.. The Income Tax Bureau appeared by Peter Crotty, Esq., (Paul Rosenkrantz, Esq. of counsel).

ISSUE

Whether petitioner, Irving Novick's activities as an immigration consultant for the years 1968, 1969, and 1970 qualified him for a profession exemption under section 703(c) of the Tax Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Irving Novick, and his wife filed New York State income tax resident returns for the years 1968, 1969, and 1970. He did not file New York State unincorporated business tax returns for said years.

2. On June 24, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Irving Novick, upon the grounds that his activities, during the years 1968, 1969, and 1970 as an immigration consultant constituted the carrying on of an unincorporated business.

3. Petitioner, Irving Novick, is and has been an immigration consultant in the field of immigration law since 1933. The petitioner's work consists of representing alien individuals before the Immigration and Naturalization Service and before the Board of Immigration Appeals in Washington D. C., in both the legal and technical aspects of their respective immigration cases.

4. In 1944 due to a legislative act only attorneys at law were permitted to practice before the Immigration and Naturalization Service and the Board of Immigration Appeals in Washington D. C. However, the petitioner, Irving Novick, was admitted by the United States Department of Justice to practice before the Immigration and Naturalization Service and the Board of Immigration Appeals in Washington D. C. under Code 8 of Federal Regulations section 242(1h), based on a "Grandfather" amendment. He met all of the required qualifications and received his certificate to practice on June 25, 1945. He was also required to abide by a code of professional ethics.

5. Petitioner, Irving Novick, is not an attorney of law. He did not attend any formalized educational institutions, petitioner's knowledge of immigration law was gained by a prolonged course of specialized experience and self-study.

6. Capital was not an income producing factor and more than 80% of his income was derived from services rendered by the petitioner.

7. That the activities of petitioner, Irving Novick, as a immigration consultant during the years 1968, 1969, and 1970, although requiring special

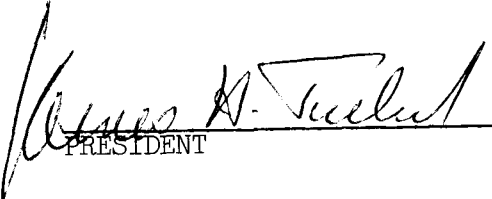
knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law and NYCRR 203.11.

8. That the aforesaid activities of petitioner, Irving Novick, during the years 1968, 1969, and 1970 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

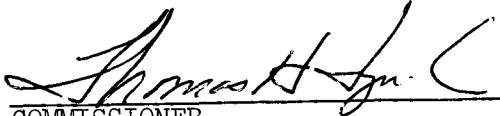
9. That the petition of Irving Novick is denied and the Notice of Deficiency in the sum of \$1,670.38 issued on June 24, 1974 is sustained.

DATED: Albany, New York
August 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER