

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LOUIS M. BERNSTEIN

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, 1970 and 1971.

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
Xhe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of April, 1978, Xhe served the within  
Notice of Decision by (certified) mail upon Louis M. Bernstein

~~XXXXXXXXXXXXXXXXXXXX~~  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Louis M. Bernstein  
3320 Gulf of Mexico Drive  
Sarasota, Florida 33677

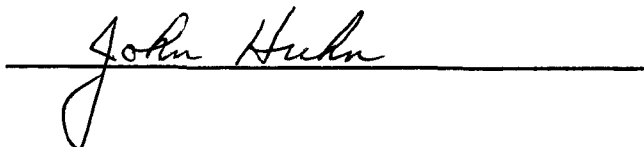
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~  
~~of the~~ petitioner herein and that the address set forth on said wrapper is the  
~~XXXXXX~~ last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~  
~~(representative of the)~~ petitioner.

Sworn to before me this

24th day of April, 1978.





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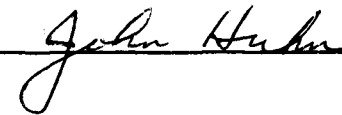
John Huhn, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of April, 1978, she served the within  
Notice of Decision by (certified) mail upon Irving E. Block, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Irving E. Block, CPA  
200 West 57th Street  
New York, New York 10019  
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

24th day of April, 1978







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

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

**April 24, 1978**

**Louis M. Bernstein  
3320 Gulf of Mexico Drive  
Sarasota, Florida 33677**

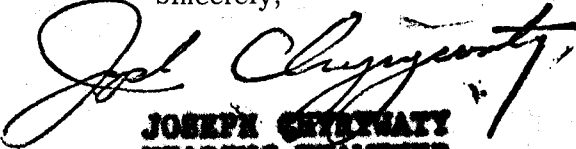
**Dear Mr. Bernstein:**

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 C. CARTY  
HEARING EXAMINER**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LOUIS M. BERNSTEIN	:	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, 1970 and 1971.	:	

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Petitioner, Louis M. Bernstein, residing at 3320 Gulf of Mexico Drive, Sarasota, Florida 33677, 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, 1970 and 1971 (File No. 00156).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 23, 1977 at 9:15 A.M. The petitioner appeared by Irving E. Block, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

#### ISSUE

Whether the activities performed by the petitioner, Louis M. Bernstein, as a consultant during the years 1968 through 1971 constituted the practice of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Louis M. Bernstein, and his wife filed New York State income tax returns for the years 1968 through 1971. He did not file New York State unincorporated business tax returns for said years.

2. On March 25, 1974, the Income Tax Bureau issued notices of deficiency against Louis M. Bernstein, imposing unincorporated business tax upon income received by him from his activities as a consultant during the years 1968, 1969, 1970 and 1971. The Notice of Deficiency issued for the years 1968, 1969 and 1970 also imposed penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1969 and 1970 only. The Notice of Deficiency issued for the year 1971 included adjustments pertaining to the personal income tax portion of the petitioner's return. This is not being contested by the petitioner, Louis M. Bernstein.

3. During the years 1968 through 1971, petitioner, Louis M. Bernstein, was a consulting marketing specialist who dealt primarily with oil industry firms. His income as a consulting marketing specialist was derived from the preparation and conduct of business seminars. The petitioner, Louis M. Bernstein, was retained by clients to prepare and hold seminars and to keep their supervisory personnel abreast of advanced marketing techniques pertaining to their business activity.

4. Petitioner, Louis M. Bernstein, graduated from Cornell University with a degree in economics. He also did graduate work at Cornell University. In his career, petitioner has taught and lectured at various universities on subjects related to economics and marketing.

5. Petitioner, Louis M. Bernstein, maintained that his activities were that of a teacher and that he was retained by his clients to teach their personnel various aspects of marketing techniques, as well as how these techniques could be applied in their business activities.

6. Petitioner, Louis M. Bernstein, did not employ any assistants, nor was capital a material income-producing factor.

CONCLUSIONS OF LAW

A. That the activities performed by the petitioner, Louis M. Bernstein, in the years 1968, 1969, 1970 and 1971, 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 petitioner's activities as a consultant during the years 1968 through 1971 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Consequently, the income derived therefrom is subject to unincorporated business tax.

C. That the petition of Louis M. Bernstein is denied and the notices of deficiency issued on March 25, 1974 are sustained.

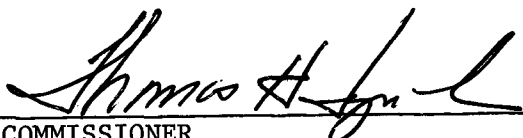
DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER