

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORTON CANDEE

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) ~~or Period(s)~~ :
1968 through 1971.

State of New York
County of Albany

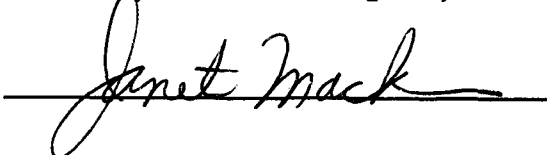
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of February , 1978, he served the within
Notice of Decision by (certified) mail upon Morton Candee
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Morton Candee
240 Cabrini Boulevard
New York, New York 10033

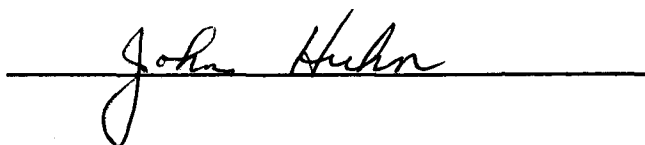
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

17th day of February , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORTON CANDEE

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) ~~on Period(s)~~ :
1968 through 1971.

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 17th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon William Segal

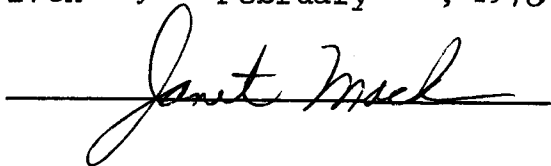
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William Segal, CPA
342 Madison Avenue
New York, New York 10017

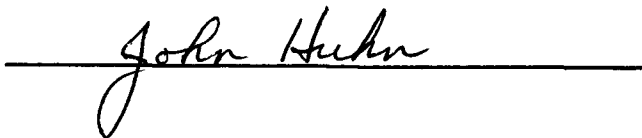
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

17th day of February, 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

February 17, 1978

**Mr. Morton Candee
240 Cabrini Boulevard
New York, New York 10033**

Dear Mr. Candee:

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: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MORTON CANDEE : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1968 through 1971. :
:

Petitioner, Morton Candee, residing at 240 Cabrini Boulevard, New York, New York, 10033, 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 through 1971 (File No. 12549).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 26, 1977 at 9:15 A.M. Petitioner appeared with William Segal, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioner's income was exempt from unincorporated business tax on the grounds that it was derived from the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Morton Candee, filed New York State income tax resident returns for the years 1968 through 1971. He did not file unincorporated business tax returns for said years.

2. On September 30, 1974, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$728.08 for the years 1968 through 1971, on the grounds that income derived by petitioner from his activities as a rent collector was subject to unincorporated business tax.

3. During the years 1968 through 1971, petitioner rendered various services to several real-estate holding companies of which he was a partner or shareholder. These services included his preparing and checking all leases, securing mortgages that had to be obtained or renewed, handling all rent stabilization and rent control matters and managing the agents who collected the rent for the different companies. It was the fees received by petitioner from the rendering of these services that the Income Tax Bureau held subject to unincorporated business tax.

4. During the years at issue, petitioner was an attorney admitted to the practice of law in New York State.

5. Petitioner contended that the fees received by him from the real-estate holding companies were entirely for legal services rendered. Said fees were not 50 percent allocable to legal services as stated in his representative's letter dated August 3, 1973. Petitioner did not receive any other legal fees during the years 1968, 1969, 1970 and 1971.

6. Petitioner did not segregate income for the years 1968 through 1971, so as to indicate what portion of income represented fees from his law practice and what portion represented income from real estate activities.

CONCLUSIONS OF LAW

A. That although petitioner was qualified and legally authorized to practice a profession and his legal education and experience were in some cases of value in his work, the purpose of his advice and of the application of his professional knowledge

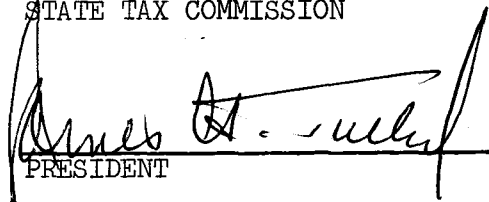
related to real estate activities. There is no evidence that the practice of law was essential to such real estate activities or that comparable education and training were required or were common to those engaged in similar business activities; therefore, said activities do not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of petitioner, Morton Candee, during the years 1968 through 1971 constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law, and the income derived therefrom was subject to unincorporated business tax.

C. That the petition of Morton Candee is denied and the Notice of Deficiency issued on September 30, 1974 in the sum of \$728.08 is sustained.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER