

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN R. CARD and ENID CARD

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) ~~XXXX XXXXXX~~ :
1971 through 1974

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 14th day of February , 1978 , He served the within
Notice of Decision by (certified) mail upon Sol M. Nissel, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sol M. Nissel, CPA
400 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

14th day of February , 1978.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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For a Redetermination of a Deficiency or :
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of Unincorporated Business :
Taxes under Article (X) 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1971 through 1974.

State of New York
County of Albany

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age, and that on the 14th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon John R. Card & Enid Card

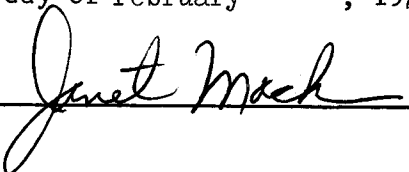
~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John R. Card & Enid Card
85 Bogert's Mill Road
Harrington Park, New Jersey 07640

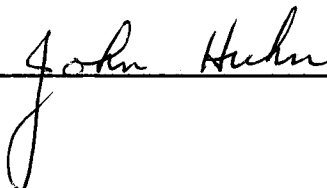
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the United States Postal Service within the State of New York.

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

Sworn to before me this

14th day of February, 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
February 14, 1978

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

**John R. Card & Maid Card
85 Bogert's Mill Road
Harrington Park, New Jersey 07640**

Dear Mr. & Mrs. Card:

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(2) **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 GHYATT
HEARING EXAMINER**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN R. CARD and ENID CARD : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1971 through 1974. :
:

Petitioners, John R. Card and Enid Card, residing at 85 Bogert's Mill Road, Harrington Park, New Jersey 07640, 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 through 1974 (File Nos. 12550 and 15886).

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 May 26, 1977 at 1:15 P.M. Petitioners appeared by Sol M. Nissel, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Lawrence Stevens, Esq., of counsel).

ISSUE

Whether the activities of petitioner John R. Card during the years 1971 through 1974 constituted the practice of a profession, or whether the activities constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioners, John R. Card and Enid Card, filed New York State personal income tax returns for the years 1971 through 1974. Petitioner John R. Card did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner John R. Card was engaged in the carrying on of an unincorporated business and that his activities did not constitute the practice of a profession. A Notice of Deficiency was issued on September 30, 1974 for the years 1971 and 1972, for \$993.09 in unincorporated business tax, plus \$324.94 in penalty and \$116.42 in interest, for a total due of \$1,434.45. Another Notice of Deficiency was issued on June 28, 1976 for the years 1973 and 1974, for \$3,174.77 in unincorporated business tax, plus \$433.51 in interest, for a total of \$3,608.28, less \$1,292.77, this being an overpayment shown on the 1974 tax return, for a balance due of \$2,315.51.

3. Petitioner John R. Card contended that the services he performed as an independent contractor were in the field of professional teaching and, therefore, they were exempt from the imposition of unincorporated business tax.

4. In 1962 petitioner John R. Card graduated with a B.S. degree from Columbia College where he majored in mathematics. During the years 1962 through 1970, he was employed by Basic Systems, Inc. and subsequently by Argyle Publishing Corp. For both employers, petitioner prepared the material and method of presentation of said material used in the industrial training of various companies' employees.

5. During the years 1971 through 1974, petitioner was self-employed. He performed services as an independent contractor similar to those he previously performed as an employee. These services involved the organization and method of presentation of a body of knowledge for his principals' employees. Petitioner obtained any required technical information from his principals. He then prepared written material, pictures and instructional cassettes which were presented by the principals to their employees.

6. The purpose of the prepared training material was to instruct workers on how to do a specific task or perform their general duties more efficiently and in conformity with their employer's policies. Petitioner John R. Card did not actually teach. He did not have personal contact with the pupils in a classroom setting.

CONCLUSIONS OF LAW

A. That the activities of petitioner John R. Card during the years 1971 through 1974, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of 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 John R. Card during the years 1971 through 1974 constituted the carrying on of an unincorporated business, and that his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of John R. Card and Enid Card is denied and the notices of deficiency are sustained.

DATED: Albany, New York
February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER