

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

NORMAN CLOUTIER^{of} and PAUL HEALEY
individually and as co-partners :
d/b/u the firm name and style of :
CLOUTIER HEALEY ASSOCIATES
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) or Period(s)~~ 1970. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

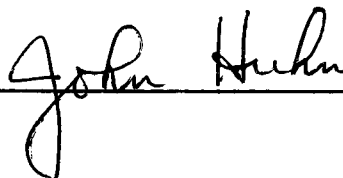
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Cloutier Healey
Associates (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Cloutier Healey Associates
c/o Norman Cloutier
15 Wayside Place
Montclair, New Jersey 07042
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

13th day of December , 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

December 13, 1978

**Cloutier Healey Associates
c/o Norman Cloutier
15 Wayside Place
Montclair, New Jersey 07042**

Gentlemen:

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~~
~~Deputy Commissioner~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NORMAN CLOUTIER and PAUL HEALEY	:	
Individually and as co-partners	:	
d/b/u the firm name and style of	:	DECISION
CLOUTIER HEALEY ASSOCIATES	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1970.	:	
	:	

Petitioner, Cloutier Healey Associates, c/o Norman Cloutier, 15 Wayside Place Montclair, New Jersey 07042, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970 (File No. 13118).

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 January 10, 1978 at 10:45 A.M. Petitioner appeared by Norman Cloutier. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether the activities of the partnership, Cloutier Healey Associates, during 1970 constituted the carrying on of an unincorporated business, and whether said partnership was engaged in the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

II. Whether penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law were properly asserted against petitioner.

FINDINGS OF FACT

1. Norman Cloutier and Paul Healey were partners in the firm of Cloutier Healey Associates, a partnership located in New York City during 1970. The partnership filed a New York State partnership tax return for said year, but did not compute or pay unincorporated business tax.

2. The Income Tax Bureau contended that the partnership was engaged in the carrying on of an unincorporated business. On March 25, 1974, it issued a Notice of Deficiency, asserting unincorporated business tax of \$5,907.83, plus penalty and interest of \$2,392.67 and \$1,043.56, respectively, for a total of \$9,344.06. The other adjustments made to the partnership return are not at issue.

3. The partnership was involved in office planning and design. The services it performed for clients included the following: examining and negotiating leases; preparing feasibility studies and evaluating building locations and office space; specifying interior building materials, designing and detailing interior office space; coordinating building trades for the purpose of expediting work to meet a predetermined lease date; furnishing and moving the client into his new office.

4. The partnership was retained by commercial clients and was compensated on an hourly basis or on a fee arrangement. Neither of the two partners was licensed as an engineer or architect.

5. The partnership was advised by its accountant that it was engaged in the practice of a profession and, therefore, was not subject to unincorporated business tax.

CONCLUSIONS OF LAW

A. That the activities of Norman Cloutier and Paul Healey, individually and as co-partners d/b/u the firm name and style of Cloutier Healey Associates, constituted the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703(a) of the Tax Law. Said activities did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

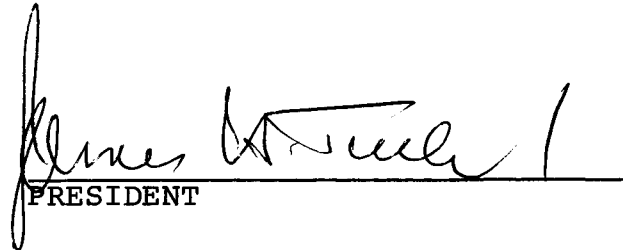
B. That petitioners acted in good faith; therefore, the penalties asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.

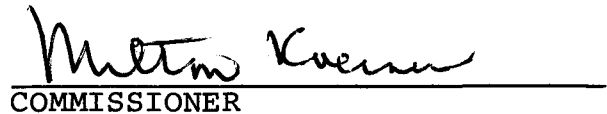
C. That the petition of Norman Cloutier and Paul Healey, individually and as co-partners d/b/u the firm name and style of Cloutier Healey Associates, is granted to the extent that the

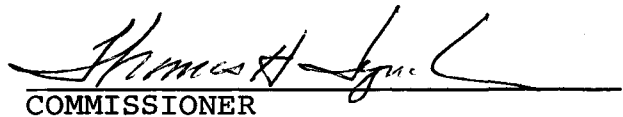
penalties imposed pursuant to section 685(a) of the Tax Law are cancelled; that the Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued March 25, 1974 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER