

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME H. FUCHS and ELEANOR FUCHS:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Unincorporated Business** :
Taxes under Article ~~(a)~~ 23 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1967 through 1970.

State of New York
County of Albany

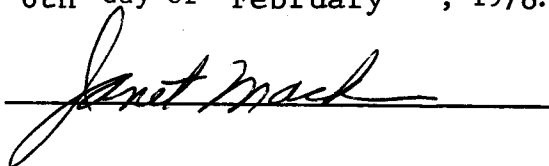
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of February , 1978 , she served the within
Notice of Decision by (certified) mail upon Jerome H. Fuchs and
Eleanor Fuchs (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jerome H. & Eleanor Fuchs
30 Cabot Road West
Massapequa, NY 11758

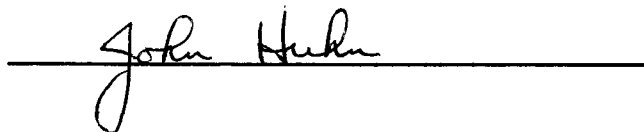
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of February , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME H. FUCHS and ELEANOR FUCHS

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~~ (s)
1967 through 1970.

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 6th day of February, 1978, she served the within
Notice of Decision by (certified) mail upon Raymond Zutell, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Raymond Zutell, Esq.

2615 Webster Avenue
Bronx, NY ~~11758~~

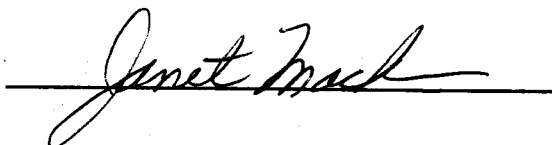
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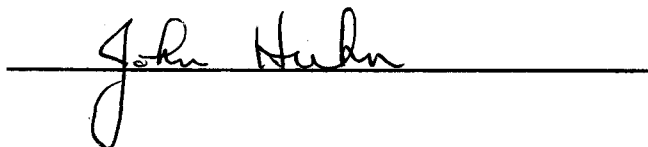
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That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

6th 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 6, 1978

Jerome H. & Eleanor Fuchs
30 Cabot Road West
Massapequa, NY 11758

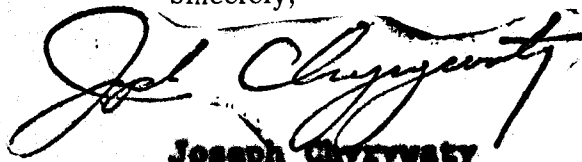
Dear Mr. & Mrs. Fuchs:

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 **(m) 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 Petitions	:	
of	:	
JEROME H. FUCHS AND ELEANOR FUCHS	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967 through 1970.	:	

Petitioners, Jerome H. Fuchs and Eleanor Fuchs, residing at 30 Cabot Road West, Massapequa, New York 11758, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967 through 1970 (File No. 00367).

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 April 25, 1977 at 9:15 A.M. The petitioners appeared by Raymond Zutell, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioner Jerome H. Fuchs' activities as a marketing consultant during the years 1967 through 1970 constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

II. Whether petitioner Jerome H. Fuchs had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967 through 1970.

FINDINGS OF FACT

1. Petitioner Jerome H. Fuchs and his wife, petitioner Eleanor Fuchs, filed New York State resident income tax returns for the years 1967, 1968, 1969 and 1970. He did not file New York State unincorporated business tax returns for said years.

2. On June 26, 1972 and on February 25, 1974, the Income Tax Bureau issued statements of audit changes against the petitioners, Jerome H. Fuchs and Eleanor Fuchs. The statement issued against petitioners on June 26, 1972 included the years 1967, 1968 and 1969. The statement issued against petitioner Jerome H. Fuchs on February 25, 1974 included the year 1970. Both were issued on the grounds that Jerome H. Fuchs' activities as a management consultant for said years constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. The Bureau also asserted penalties pursuant to section 685(a) of the Tax Law for the years 1967 and 1968 and pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1969 and 1970. Accordingly, the Income Tax Bureau issued a Notice of Deficiency dated June 26, 1972 for the years 1967, 1968 and 1969 in the sum of \$6,814.02, and a Notice of Deficiency dated February 25, 1974 for the year 1970 in the sum of \$681.35.

3. Petitioner Jerome H. Fuchs contended that the unincorporated business tax assessed by the Income Tax Bureau for the aforesaid years had been fully paid. The evidence submitted by them indicated that installment payments were remitted by the petitioners for said years.

4. Jerome H. Fuchs was a management consultant during the years 1967 through 1970. As a management consultant, he served numerous corporations in areas that required experience and knowledge in industry and commerce; e.g. profit-improvement programs, turnarounds, organization planning and control, policy and practices formulation, electronic data processing configurations and systems, methods and work measurement applications. Capital was not a material income-producing factor and all income was derived from his personal services.

5. Petitioner Jerome H. Fuchs received a Bachelor of Arts degree in sales management from Syracuse University in 1950. In 1951 he received a Master's degree in production management also from Syracuse University. Since 1960, petitioner Jerome H. Fuchs has been a professional management consultant. He is a founding member of the Institute of Management Consultants and has qualified for recognition as a "Certified Management Consultant." He is also a charter member of the Society of Professional Management Consultants. Petitioner has had several books published relative to the subject of management consulting. He has lectured at several management association meetings and has taught at various universities.

6. Petitioner maintained that his educational background in having received a Master's degree, as well as his vast experience as a teacher, instructor, lecturer, seminar leader and writer, more than qualify him to be considered a professional under the statute.

7. Petitioner Jerome H. Fuchs was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1967 through 1970.

CONCLUSIONS OF LAW

A. That the word "profession" implies attainments in professional knowledge in some department of science or learning and not mere skill in and application of knowledge. The performance of services dealing with the conduct of business itself, including the promotion of sales or services of such business and consulting services, does not constitute the practice of a profession, even though the services involve the application of a specialized knowledge. Although petitioner Jerome H. Fuch's activities as a marketing consultant require special knowledge and skills, the application and nature of these attributes do not constitute a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner Jerome H. Fuchs during the years 1967 through 1970 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law. Therefore, income derived from said activities is subject to unincorporated business tax.

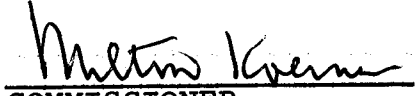
C. That petitioners, Jerome H. Fuchs and Eleanor Fuchs, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967 through 1970 and, therefore, the penalties assessed pursuant to section 685(a) of the Tax Law for the years 1967 and 1968 and pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1969 and 1970 are cancelled.

D. That the petitions of Jerome H. Fuchs and Eleanor Fuchs are granted to the extent of cancelling the penalties as stated in Conclusion of Law "C" above; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued on June 26, 1972 and February 25, 1974 and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER