

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RUBIN HERBSTMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (8) 23 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 16th day of March, 1978, ~~she~~ she served the within  
Notice of Decision by (certified) mail upon Rubin Herbstman  
~~Xrepresentative of~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Rubin Herbstman  
1965 Chatterton Avenue  
Bronx, New York 10473  
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 ~~Xrepresentative~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~Xrepresentative of the~~ petitioner.

Sworn to before me this

16th day of March, 1978.

Janet Mack

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
RUBIN HERBSTMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~21~~ 23 of the :  
Tax Law for the Year(s) ~~XXXXXXXXXX~~ :  
1968, 1969 and 1970.

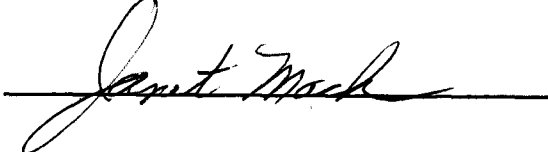
State of New York  
County of Albany

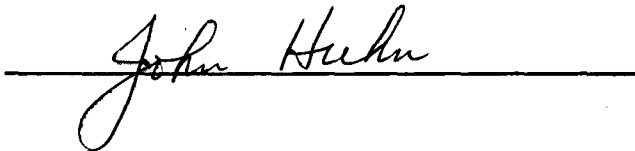
John Huhn, being duly sworn, deposes and says that  
She is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 16th day of March, 1977, She served the within  
Notice of Decision by (certified) mail upon Melvin Turk, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Melvin Turk, CPA  
521 Fifth 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

16th day of March, 1978.







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

March 16, 1978

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

Rubin Herbstman  
1965 Chatterton Avenue  
Bronx, New York 10473

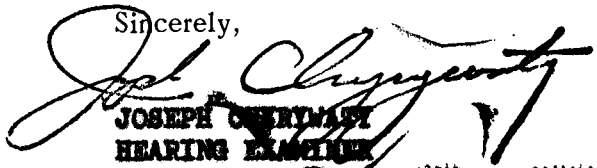
Dear Mr. Herbstman:

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 **(d) 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. CHIRBA  
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 :  
RUBIN HERBSTMAN : 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 and 1970. :  
:

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Petitioner, Rubin Herbstman, 1965 Chatterton Avenue, Bronx, New York 10473, 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 and 1970 (File No. 00295).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 5, 1977 at 1:15 P.M. The petitioner appeared by Melvin Turk, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner's business activities during the years 1968 through 1970 constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Rubin Herbstman, filed New York State income tax resident returns for the years 1968, 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. On audit, the Income Tax Bureau issued a Notice of Deficiency dated June 24, 1974, asserting that the income derived from petitioner's business activities was subject to unincorporated business tax.

3. During the years in issue, Rubin Herbstman was self-employed and conducted business under the name and style of Vanguard Investigation Service. His activities included the rendering of investigative, protective and security services.

4. Petitioner was a former police officer for the City of New York. In the performance of his police work, he acquired an expertise in investigative, protective and security services.

5. In the operation of Vanguard Investigation Service, petitioner employed an average of thirty to forty persons per year.

CONCLUSIONS OF LAW

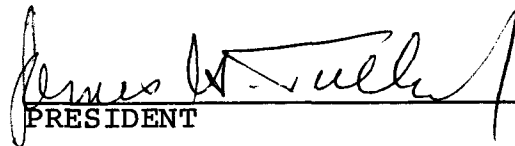
A. That the petitioner's activities did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

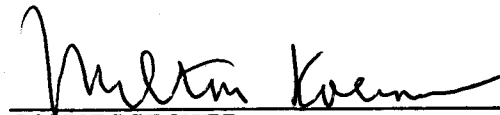
B. That the petitioner's income derived from his business activities conducted under the name and style of Vanguard Investigation Service is subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.


C. That the petition of Rubin Herbstman is denied and the Notice of Deficiency issued June 24, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
March 16, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER