

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition .

of

FABIAN LINDEN

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

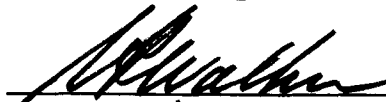
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of April , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Fabian Linden
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Fabian Linden
1235 Park Avenue, Apt. 11C
New York, New York 10028

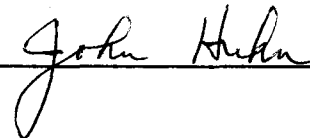
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

5th day of April , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

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FABIAN LINDEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of April , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Simon J. Hauser


(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Simon J. Hauser, Esq.
41 East 57th Street
New York, New York 10022

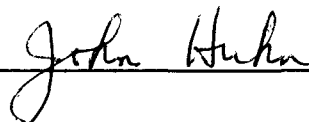
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

5th day of April , 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

April 5, 1978

Mr. Fabian Linden
1235 Park Avenue, Apt. 11C
New York, New York 10028

Dear Mr. Linden:

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 **(5) 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
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
FABIAN LINDEN : 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, Fabian Linden, residing at 1235 Park Avenue, Apt. 11C, New York, New York 10028, 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. 11496).

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 March 29, 1977 at 10:45 A.M. Petitioner appeared pro se and by Simon J. Hauser, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as an economist during the years 1968 through 1971 constituted the practice of a profession, exempt from the imposition of unincorporated business tax.

II. Whether petitioner had reasonable cause for failing to file unincorporated business tax returns for the years 1968 through 1971.

FINDINGS OF FACT

1. Petitioner, Fabian Linden, and his wife timely filed New York State income tax resident returns for the years 1968 through 1971. He did not file New York State unincorporated business tax returns for said years.

2. On November 24, 1975, the Income Tax Bureau issued notices of deficiency against petitioner in the sum of \$699.31 for the years 1968 and 1969 and \$1,058.15 for the years 1970 and 1971, upon the grounds that petitioner's activities did not constitute the practice of a profession exempt from the imposition of unincorporated business tax. The aforesaid amounts also included penalties imposed under section 685(a) of the Tax Law for the year 1968, sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1969 through 1971 and section 685(c) of the Tax Law for the year 1971.

3. During the years in question, petitioner, Fabian Linden, was an economist and demographer. He was considered to be a recognized authority in his field, namely, the study of consumer attitudes. In the practice of his occupation, he analyzed trends in the consumer sector of social and economic dimensions, wrote articles and compiled reports setting forth these findings.

4. Petitioner, Fabian Linden, received a Bachelor of Arts degree from New York University in 1939 and a Master's degree in Economics from Harvard University in 1941.

5. During the years 1968 through 1971, petitioner's income as an economist was derived solely from personal services rendered by him. Capital was not a material income producing factor.

6. Petitioner contended that the income received from his activities (which included written reports on social and demographic trends) was earned by his exercise of knowledge of an advanced type in the field of economics, gained by a prolonged course of specialized instruction and study.

7. Petitioner contended that he prepared his own returns without the assistance of an accountant or attorney. However, the New York State combined income tax returns for the year 1969 contained the signature of a Certified Public Accountant and the 1970 and 1971 returns indicated that the preparer was Alan G. Harrow, CPA.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Fabian Linden, as an economist during the years 1968 through 1971, 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 during the years 1968 through 1971 constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincor-

porated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petitioner has not shown that his failure to file unincorporated business tax returns and to pay the unincorporated business tax due for the years in question was due to reasonable cause. Therefore, the penalties imposed pursuant to section 685(a) of the Tax Law for the year 1968 and sections 685(a) (1) and 685(a) (2) of the Tax Law for the years 1969 through 1971 are sustained.

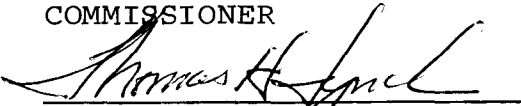
D. That the petition of Fabian Linden is denied and the notices of deficiency issued November 24, 1975 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 5, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER