

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARMAND MANCUSO

AFFIDAVIT OF MAILING

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)~~ :  
1971 and 1972

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of October, 1978, ~~she~~ he served the within  
Notice of Decision by (certified) mail upon Armand Mancuso  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Armand Mancuso  
P.O. Box 114  
North Troy, New York 12182  
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)~~  
~~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 October, 1978

H. Walker

John Huhn



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

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

October 13, 1978

Armand Mancuso  
P.O. Box 114  
North Troy, New York 12182

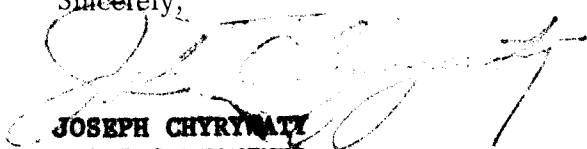
Dear Mr. Mancuso:

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 ~~72~~ **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 CHYRYNIAK**  
**HEARING EXAMINER**

~~xxxxxx Petitioner's Representative xxxxxxxx~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ARMAND MANCUSO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971 and 1972.	:	

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Petitioner, Armand Mancuso, P.O. Box 114, North Troy, New York 12182, 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 and 1972 (File No. 11707).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 17, 1977 at 9:15 A.M. Petitioner appeared pro se and by Anthony Pisano, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether petitioner's activities during the years 1971 and 1972 constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner, Armand Mancuso, filed New York State personal income tax returns for the years 1971 and 1972, on which he listed his occupation to be that of tax accountant. He reported on said returns that his business income was derived from tax and bookkeeping in the year 1971 and from tax accounting in 1972. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency against him on July 29, 1974 in the amount of \$864.46 in unincorporated business tax, plus \$287.48 in penalty and \$99.65 in interest for a total due of \$1,251.59.

3. Petitioner contended that he was engaged in the practice of the profession of "tax practitioner" and that he was an expert on tax matters. He was enrolled to practice (at the administrative level) before the Internal Revenue Service and was bound by professional ethics and regulations in such practice. He also contended that he did no bookkeeping and was not an accountant.

4. Petitioner graduated from Syracuse University in 1954 with a Liberal Arts degree which included 6 credit hours of accounting. He attended Albany Law School for one-half year in

1956. His mother-in-law was a public accountant and petitioner worked in her office preparing tax returns during the years 1962 through 1968, when she tutored him in tax matters. During 1969 and 1970, petitioner took home-study courses to prepare himself for a Federal test which he was required to pass before he could be enrolled to practice before the Internal Revenue Service. There were no requirements prescribed by the Internal Revenue Service to qualify petitioner to apply for and take the test. Petitioner was neither a certified public accountant nor a licensed accountant.

5. During 1971 and 1972, petitioner had his own business office which he "inherited" from his mother-in-law. He worked daily from 9:30 a.m. to 3:00 p.m. From 9:30 a.m. to 11:00 a.m., petitioner made phone calls to clients on tax matters. From 11:00 a.m. to 3:00 p.m., petitioner consulted with clients and prepared tax returns. Petitioner had a secretary who did the required bookkeeping. During the tax season, petitioner's aunt also did bookkeeping and his wife prepared tax returns. Petitioner's practice before the Internal Revenue Service and New York State Department of Taxation and Finance was at the conferee level and involved tax audits. Most of petitioner's work involved consultation with individuals leading to the preparation of their income tax returns.

CONCLUSIONS OF LAW

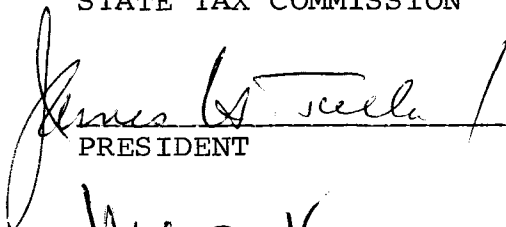
A. That the activities of petitioner, Armand Mancuso, during the years 1971 and 1972, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of petitioner, Armand Mancuso, during said years constituted the carrying on of an unincorporated business; thus, the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

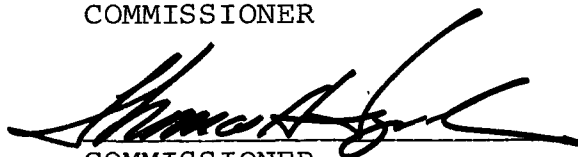
C. That the petition of Armand Mancuso is denied and the Notice of Deficiency issued July 29, 1974 in the sum of \$1,251.59 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
October 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER