

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD D. SIEGAL

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) or Period(s) :
1971 and 1972.

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 20th day of September , 19 78 , she served the within
Notice of Decision by (certified) mail upon Richard D. Siegal

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Richard D. Siegal
343 Forest Avenue
Woodmere, New York 11598

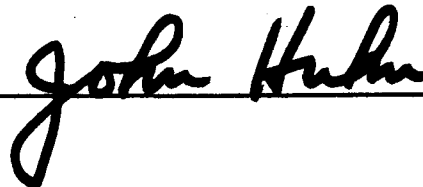
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20th day of September , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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of

RICHARD D. SIEGAL

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For a Redetermination of a Deficiency or :
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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 is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of September , 19 78 , she served the within
Notice of Decision by (certified) mail upon Morris P. Silver

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morris P. Silver, CPA
45 North Station Plaza
Great Neck, New York 11021

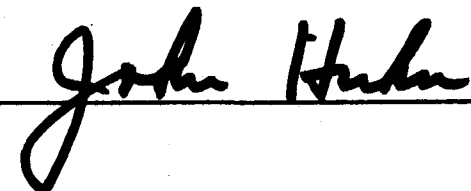
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20th day of September , 19 78







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

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

September 26, 1978

Mr. Richard D. Siegal
343 Forest Avenue
Woodhams, New York 11598

Dear Mr. Siegal:

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 ~~(S)~~ 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~~ 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 Chynoweth
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD D. SIEGAL	:	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.	:	

Petitioner, Richard D. Siegal, 343 Forest Avenue, Woodmere, New York 11598, 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. 12387).

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 October 19, 1977 at 9:15 A.M. Petitioner appeared by Morris Silver, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the income derived from petitioner's activities as a business consultant during 1971 and 1972 was subject to unincorporated business tax.

II. Whether penalties imposed on petitioner by the Income Tax Bureau (pursuant to section 685(a)(1) and (2) of the Tax Law) for his failure to file unincorporated business tax returns were proper.

FINDINGS OF FACT

1. Petitioner, Richard D. Siegal, did not file unincorporated business tax returns for 1971 and 1972. On his New York State personal income tax return for 1971, he designated his occupation to be that of a business consultant. On page "2" of said tax return, petitioner entered an amount for wages and also reported business income as a business consultant. On his 1972 New York State personal income tax return, petitioner designated his occupation as "services." On page "2" of said return, he reported wages and also an amount as business income from services.

2. The Income Tax Bureau contended that the income reported as business income for 1971 and 1972 was derived from petitioner's activities as a business consultant and, therefore, subject to unincorporated business tax. It issued a Notice of Deficiency on July 28, 1975 for 1971 and 1972 in the amount of \$1,744.80 in unincorporated business tax, plus \$658.31 in penalty and \$325.73 in interest, for a total due of \$2,728.84.

3. Petitioner was an attorney admitted to practice in the courts of the states of New York and Virginia. During 1971 and 1972, he received income as an employee in the amount of \$12,000.00 each year for non-legal services in the investment field. The taxability of said income for unincorporated business purposes is not at issue. The balance of his income was mainly derived in the field of investment consulting, with particular emphasis on tax-sheltered investments. The amount of his compensation from clients was based on the amount invested by the client or the potential investment effect on the client. When no investment was made by the client, the time expended by petitioner in the counseling of his client was used as a basis for his compensation.

4. Petitioner filed Federal Schedule "C" in which he claimed substantial deductions for rent for an office in his home, salaries paid, legal fees paid, commissions paid and promotion and client development.

5. Petitioner did not submit documentary or other substantial evidence to show that any portion of his income was received from legal services rendered and not from advising and promoting investments.

6. Petitioner contended that his accountant filed his tax returns and advised him that he was not required to file unincorporated business tax returns. The Income Tax Bureau conceded that petitioner showed reasonable cause for not filing unincorporated business tax returns and that said penalties should be cancelled.

CONCLUSIONS OF LAW

A. That although petitioner, Richard B. Siegal, was an attorney licensed to practice the profession of law, he acted in a business capacity as a business consultant during 1971 and 1972. The immunity from taxation for unincorporated business tax purposes applies only to professional activities. Therefore, petitioner was engaged in the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the income derived from petitioner's activities as a business consultant during 1971 and 1972 was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That all penalties imposed on petitioner, Richard B. Siegal, for failing to file unincorporated business tax returns are cancelled.

D. That the petition of Richard B. Siegal is granted to the extent that all penalties are cancelled. The Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued July 28, 1975, and that, except as so granted, the petition is in all other respects denied.

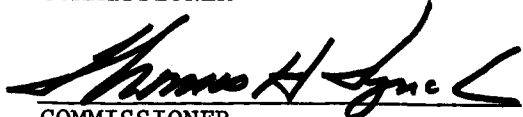
DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER