

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK WEST

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) ~~on Period(s)~~ :
1964 through 1973.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Frank West
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Frank West
South Mt. Pass
Garrison, New York 10524
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~~) petitioner.

Sworn to before me this

14th day of February , 1978.

Janet Mack

John Huhn

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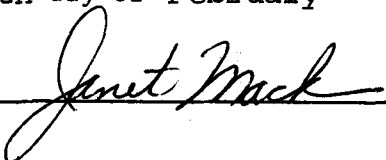
State of New York
County of Albany

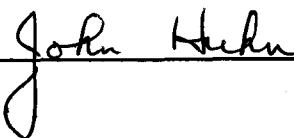
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 19 78, ~~she~~ served the within
Notice of Decision by (certified) mail upon Gerald Dickler
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Gerald Dickler, Esq.
Hall, Dickler, Lawler, Kent & Howley
460 Park Avenue
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

14th day of February , 19 78







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

February 14, 1978

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

**Mr. Frank West
South Mt. Pass
Garrison, New York 10524**

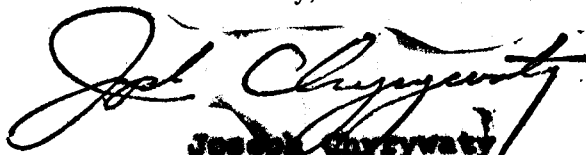
Dear Mr. West:

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 **(a) 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 Chyzywaty
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK WEST	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1964 through 1973.	:	

Petitioner, Frank West, residing at South Mt. Pass, Garrison, New York 10524, 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 1964 through 1973 (File Nos. 13468, 13469 and 13470).

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 March 31, 1977 at 9:15 A.M. Petitioner, Frank West, appeared pro se and by Gerald Dickler, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioner's activities as a marriage counselor and pastoral counselor during the years 1964 through 1973 constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner, Frank West, filed New York State combined income tax returns with his wife for the years 1964 through 1973. Petitioner did not file New York State unincorporated business tax returns for said years.

2. On January 27, 1975, the Income Tax Bureau issued statements of audit changes against petitioner, imposing unincorporated business tax on the grounds that income received from his activities as a marriage, as well as pastoral counselor during the years 1964 through 1973, constituted the carrying on of an unincorporated business. The Income Tax Bureau also adjusted petitioner's 1972 New York State personal income tax liability to include a modification required to be made under section 612(b)(11) of the Tax Law. In accordance with the aforesaid statements of audit changes, the Income Tax Bureau issued notices of deficiency against the petitioner in the sums of \$4,059.41 for the years 1964 through 1967, \$5,220.14 for the years 1968 through 1970 and \$7,538.95 for the years 1971 through 1973.

3. During the years 1964 through 1973, petitioner performed services as marriage counselor and pastoral counselor. He is licensed as a marriage counselor in the State of New Jersey, and is also a clinical member of the American Association of marriage counselors. Petitioner is not licensed as a marriage

counselor in the State of New York. The bulk of petitioner's income during the years in question was derived from pastoral counseling. A very small percentage of his income during said years was derived from marriage counseling.

4. Pastoral counseling is a function of a clergyman who has acquired specific skills through extensive education and training which enable him to help individuals with their emotional and spiritual troubles. This is accomplished by focusing upon their inner emotional structures. The primary objective of this practice is to determine and, if possible, to make clear to the patient the source of his problems and to provide him with assistance in overcoming them. Pastoral counseling is a primary (rather than supplementary) source of care. The pastoral counselor may function independently, or as a member of an interdisciplinary mental health team.

5. In 1950 the petitioner graduated from Lehigh University where he majored in psychology. In 1953 petitioner was awarded the degree of Bachelor of Divinity from Union Theological Seminary and became an ordained minister. He then embarked upon courses of graduate study at the Oberlin College Graduate School of Theology, the William Alanson White Institute of Psychiatry, the City University Graduate Psychology Department and a Graduate Resident Pastoral Counseling Internship at the American Foundation of Religion and Psychiatry. He completed his education in 1957.

These studies included over 50 graduate semester hours in psychology. During the summer recesses, he served as Assistant Pastor, Chaplin and Director of Boy Work Neighborhood House.

6. From 1957 to the present, petitioner's activities were as follows:

Pediatric Psychiatry service - Lenox Hill Hospital,
New York, N.Y., 1959 (Project for Preschool
Mentally Retarded Children)
Department of Child Psychiatry - American Foundation of
Religion and Psychiatry, Inc., 1961-1963
Consultant in Pastoral Counseling - Rye and Mt. Vernon,
N.Y., Presbyterian Churches, 1959-1962
The New York Presbytery Consultation Service
1961-1969
Union Theological Seminary - Visiting Lecturer,
1962-1969
Foundation Religion & Mental Health - Director
Pleasantville Counseling Center, 1969-1970
Pastoral Counselor, 1969 to the present
Psychoanalytically supervised private practice-
40 East 89th Street, N.Y., 1957 to present

7. Petitioner was a member of the following professional organizations: the Institute for Pastoral Counseling (of which he was a charter member and a member of the Board of Directors), the Association for Applied Psychoanalysis Inc., the Psychoanalytic Counselors Inc. (of which petitioner was a charter member and a member of the Board of Directors), the Society for the Scientific Study of Religion, the Academy of Religion and Mental Health and the American Association of Pastoral Counselors (of which he was a charter member and diplomate). He was also a member of other professional associations.

8. Petitioner's patients were referred to him by pastors and physicians. He was paid on a fee basis. His treatment combined religion and psychology, and was in the field of mental health. Petitioner's activities were governed by professional standards and by a code of ethics established by the American Association of Pastoral Counselors. He was covered by malpractice insurance. More than 80% of petitioner's income was derived from personal services rendered by him and capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That petitioner, Frank West, was engaged in an occupation or vocation in which a professed knowledge of a department of science or learning was gained through a prolonged course of specialized instruction and study. Petitioner applied this knowledge to the affairs of others by advising and guiding them and in serving their interests and welfare.

B. That the activities of petitioner, Frank West, as marriage counselor and pastoral counselor during the years 1964 through 1973, constituted 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.

C. That the petition of Frank West is granted and the notices of deficiency issued on January 27, 1975 are cancelled.

DATED: Albany, New York
February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER