

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Robert L. Ziegler (Deceased)
Mildred M. Ziegler

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 (~~XXXX XXXXXX~~) :
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, 1978, she served the within
Notice of Decision by (certified) mail upon Mildred M. Ziegler

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert L. Ziegler (Deceased) and Mildred M. Ziegler
235 Adams Street
Brooklyn, NY 11201

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)~~
~~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.

Janet Mack

John Huhn



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

Robert L. Ziegler (Deceased) and Mildred M. Ziegler
235 Adams Street
Brooklyn, NY 11201


Dear Mrs. Ziegler:

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 **(§ 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 Chryzasty
Hearing Examiner

~~State Tax Commission Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT L. ZIEGLER (Deceased)	:	DECISION
and	:	
MILDRED M. ZIEGLER	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1970.	:	

Petitioners, Robert L. Ziegler (deceased) and Mildred M. Ziegler, 235 Adams Street, Brooklyn, New York 11201, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970 (File No. 12501).

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 May 26, 1977 at 2:45 P.M. Petitioner Mildred M. Ziegler appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner Robert L. Ziegler's activities in the import-export business during the year 1970 constituted the practice of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Robert L. Ziegler and Mildred M. Ziegler, filed a New York State income tax resident return for the year 1970. An unincorporated business tax return was not filed for said year.

2. On February 16, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners for the year 1970, imposing unincorporated business tax on the income petitioner Robert L. Ziegler received from his activities as a consultant.

3. Petitioner Robert L. Ziegler died in 1972. On March 23, 1973, petitioner Mildred M. Ziegler paid the unincorporated business tax shown to be due on the Statement of Audit Changes and subsequently filed a claim for refund. On July 18, 1975, the Income Tax Bureau issued a Notice of Disallowance, disallowing her claim for refund in full.

4. During the year 1970, petitioner Robert L. Ziegler was a self-employed consultant in the import-export field. He represented Berner Industries, Inc. and received a monthly fee for such services. In addition, he received a commission on sales consummated by him and was reimbursed for all reasonable expenses.

5. Petitioner Robert L. Ziegler's expertise in the import-export field was obtained through on-the-job experience which he had been accumulating since 1916 and through self-study.

CONCLUSIONS OF LAW


A. That petitioner Robert L. Ziegler'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 activities of petitioner Robert L. Ziegler during the year 1970 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; thus, his income derived therefrom was subject to unincorporated business tax.

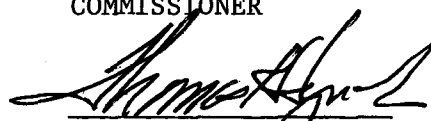
C. That the petition of Robert L. Ziegler (deceased) and Mildred M. Ziegler is denied and the Notice of Disallowance issued July 18, 1975 is sustained.

DATED: Albany, New York
March 16, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER