

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Alexander D. Calhoun :  
c/o Gtaham and James : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Unincorporated Business Tax :  
under Article 23 of the Tax Law :  
for the Years 1968 - 1972. :

State of New York  
County of Albany

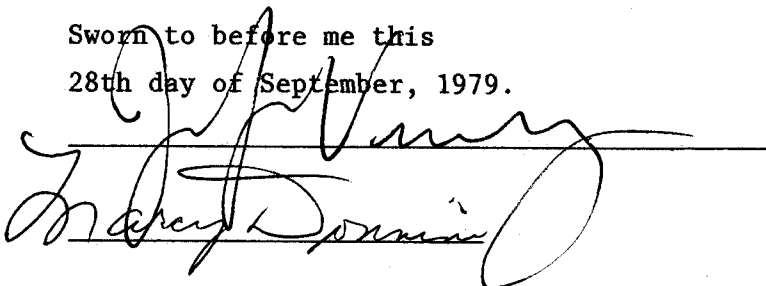
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Alexander D. Calhoun, c/o Gtaham and James, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alexander D. Calhoun  
c/o Gtaham and James  
One Maritime Plaza  
San Francisco, CA 94111

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of September, 1979.



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Alexander D. Calhoun :  
c/o Gtaham and James : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
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State of New York  
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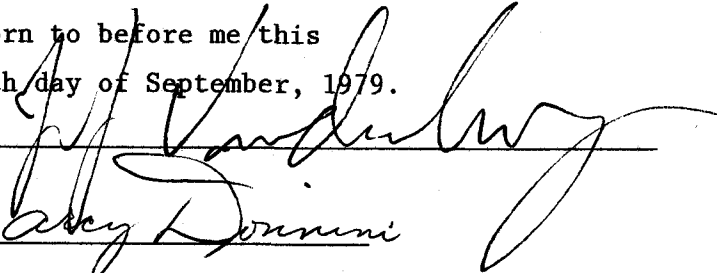
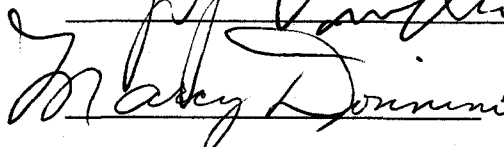
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon John J. Paulin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John J. Paulin  
c/o Price Waterhouse & Co.  
153 E. 53rd St.  
New York, NY 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  
28th day of September, 1979.

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Alexander D. Calhoun  
c/o Gtatham and James  
One Maritime Plaza  
San Francisco, CA 94111

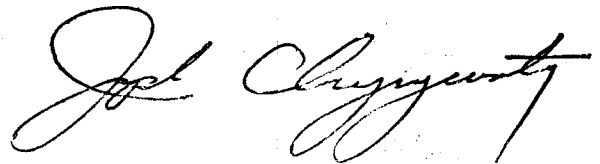
Gentlemen:

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 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,



cc: Petitioner's Representative  
John J. Paulin  
c/o Price Waterhouse & Co.  
153 E. 53rd St.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions :  
of :  
ALEXANDER D. CALHOUN : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law for :  
the Years 1968, 1969, 1970, 1971 and :  
1972. :

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Petitioner, Alexander D. Calhoun (Deceased), c/o Graham and James, One Maritime Plaza, San Francisco, California 94111, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969, 1970, 1971 and 1972 (File Nos. 15151, 17264, and 19863).

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 June 19, 1978 and on September 12, 1978. Petitioner appeared by John J. Paulin, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether income derived from petitioner's activities as a consultant was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Alexander D. Calhoun, and Minna S. Calhoun, his wife, filed New York State combined income tax resident returns for 1969, 1970, 1971 and 1972, wherein petitioner reported net business

income from his activities as a consultant. On the advice of his accountants, he did not file unincorporated business tax returns for said years.

2. On March 29, 1976, October 26, 1976, and June 27, 1977, the Income Tax Bureau issued notices of deficiency. Said notices asserted unincorporated business tax on the income derived from petitioner's activities as a consultant during the years at issue. In addition, penalties were imposed for said years pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law.

3. Petitioner, Alexander D. Calhoun, was employed by First National City Bank as a consultant in international finance and banking, until his retirement in 1963.

4. In 1967 petitioner was retained by the Security Pacific National Bank ("the Bank") as a consultant, and continued in that capacity throughout the years at issue. The bank wanted someone who would periodically visit its Los Angeles headquarters, as well as various foreign locations, in order to advise management of any problems, and to provide a sound and firm basis for the expansion of the bank's international activities.

5. Since it was the policy of the bank not to hire employees over 65 years of age, petitioner was retained as a consultant. In addition, he wanted to avoid a possible controversy over his pension rights with the First National City Bank.

6. Petitioner was compensated at a fixed rate of \$1,000.00 per month. If an assignment exceeded five days in any calendar month, he received \$200.00 per day for each additional day. He was also reimbursed by the bank for expenses which he incurred. Upon request, petitioner was provided with supplies and office space.

7. Petitioner deducted an office which he maintained at his New York residence as a business expense.

8. Petitioner did not submit any evidence which showed where his business activities were regularly carried on, or the amount of direction and control exercised by the bank over such activities.

9. Petitioner, Alexander D. Calhoun, died on January 8, 1978.

CONCLUSIONS OF LAW

A. That petitioner has not sustained the burden of proof (which is established by section 689(e) of the Tax Law), required to show that sufficient direction and control was exercised over his activities by the Security Pacific National Bank, so as to create an employer-employee relationship, within the meaning and intent of section 703(b) of the Tax Law.

B. That petitioner's activities as a financial and banking consultant during the years 1968 through 1972 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(a) of the Tax Law; as a result, the income derived therefrom is subject to unincorporated business tax.

C. That the petition of Alexander D. Calhoun is granted to the extent that the penalties imposed pursuant to section 685(a), 685(a)(1) and 685(a)(2) of the Tax Law are cancelled, due to reasonable cause.

D. That the Income Tax Bureau is hereby directed to modify the three notices of deficiency issued March 29, 1976, October 25, 1976

and June 27, 1977, and that, except as so granted, the petitions are in all other respects denied.

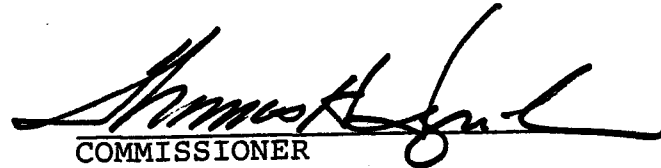
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER