

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George D. Edwards & Co. :

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 1971-1974. :

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 9th day of November, 1979, he served the within notice of Determination by certified mail upon George D. Edwards & Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

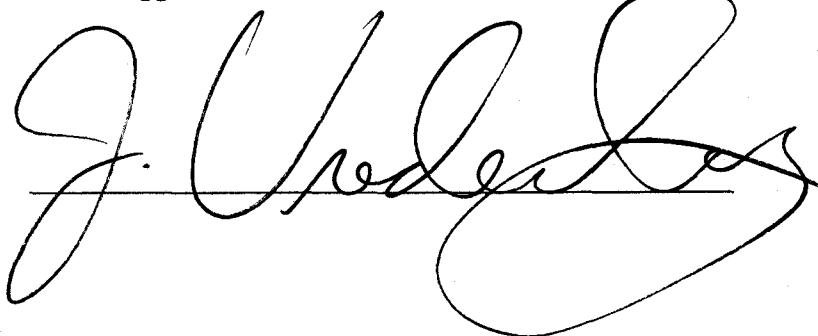
George D. Edwards & Co.
20 Exchange Pl.
New York, NY 10005

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
9th day of November, 1979.

Joanne Krapp

A large, stylized handwritten signature, likely of Jay Vredenburg, written in black ink. The signature is written over a horizontal line.

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

November 9, 1979

George D. Edwards & Co.
20 Exchange Pl.
New York, NY 10005

Gentlemen:

Please take notice of the Determination 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
GEORGE D. EDWARDS & COMPANY : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1971, 1972, 1973 and 1974. :
:

Petitioner, George D. Edwards & Company, 20 Exchange Place, New York, New York 10005, 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, 1972, 1973 and 1974 (File Nos. 12580 and 14281).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1978 at 2:45 P.M. Petitioner appeared by George D. Edwards, General Partner. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was engaged in the practice of a profession and, thus, is not to be deemed an unincorporated business for purposes of Article 23 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, George D. Edwards & Company, filed New York State partnership returns for the years 1971 through 1974, on which it reported income and deductions. However, it did not compute schedule U-D pertaining to unincorporated business tax. The kind of business noted on the 1971, 1972 and 1974 returns was that of "consultants," while on the 1973 return the line for kind of business was left blank.

2. On January 18, 1974, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, covering 1971 and 1972. The statement asserted unincorporated business tax for 1971 of \$399.44 and for 1972 \$1,126.73. The explanation given was that income from petitioner's activities as management consultants was subject to unincorporated business tax. A Notice of Deficiency was issued for these years on November 25, 1974.

An additional Statement of Audit Changes pertaining to 1973 and 1974 was issued on March 29, 1976. Under a similar explanation, the Income Tax Bureau asserted \$913.06 in unincorporated business tax for 1973 and \$613.80 in unincorporated business tax for 1974. A Notice of Deficiency was also issued for these years on March 29, 1976.

3. George D. Edwards & Company was a New York limited partnership with its place of business at 20 Exchange Place, New York, New York. George D. Edwards was the general partner and his wife, Gail F. Edwards, was the limited partner. Each of the partners received 50% of the ordinary income of the partnership for the years at issue.

4. The business of the partnership was conducted by George D. Edwards, and Gail F. Edwards did not participate in the business. Mr. Edwards was a management consultant who specialized in advising banks and other financial institutions on planning, budgeting, cost analysis and problem solving. The partnership's income was derived 100% from the services rendered by George D. Edwards.

5. George D. Edwards held a Bachelor of Science degree in electrical engineering, a Master of Science in mathematics and a Master's degree in statistics. This educational background had no substantial relevance to Mr. Edwards' functions as a management consultant, but was used by him primarily as "a background and a good discipline for problem solving." Statistics was the "most applied aspect" of his mathematical training. Mr. Edwards was a management consultant with McKenzie & Co. for seven years prior to his starting his own firm.

6. The following are actual examples of the type of services performed by Mr. Edwards:

A small bank (with about \$100 million in assets) called on Mr. Edwards to perform a general examination of the bank and to identify those areas in which it was strong and those areas in which it was weak. This included determining the profitability of the bank, the capital adequacy of the bank, evaluating its personnel, helping it plan management succession for a chairman who was retiring in two years, and helping the bank respond to several changes that were

taking place in the banking field. He also helped the bank to market overdraft checking accounts and advised it on how to emphasize residential mortgages as one of its strong areas.

At the other extreme was the work performed by Mr. Edwards for a large bank with about \$30 billion in assets. Here Mr. Edwards worked in a particular area, analyzing all of its business related to the securities industry carried out by its overseas branches, identifying which of the services had long term potential and which should be de-emphasized, as well as showing what the implications were in terms of staffing, office space and vault space for those particular services.

7. Petitioner did not recruit personnel for its clients.

8. Petitioner did not advertise its services.

9. Mr. Edwards' relationship with the clients was confidential.

10. Mr. Edwards was a member of the Institute of Management Consultants, Inc., a nonprofit membership corporation founded in 1969. According to the Institute's Booklet of Information for Membership Applicants:

"The principal purpose of the Institute is to assure the public that members possess the moral and ethical standards and the professional competence and independence required for Institute membership - and are, therefore, qualified to practice. More broadly, the goal of the Institute is to help ensure standards for the management consulting profession which will engender greater public confidence in it...."

The aforementioned booklet stated that the requirements for membership in the Institute were as follows:

"1. General Qualifications

a. Has satisfactory moral and ethical standing in the professional field of management consulting.

b. Meets the following definition of a management consultant: For purposes of membership in the Institute, management consultant is defined as an individual who (or whose firm) is engaged in management consulting (as defined below) publicly and for a fee; who devotes the substantial majority of his working time to management consulting, or in the administrative or supervisory support of management consulting; and who meets all other requirements for membership established pursuant to the by-laws.

Management consulting is a profession, the practitioners of which analyze managerial activities, problems, and processes; make evaluations of, recommend improvements and solutions relating to, and render opinions on the foregoing activities, problems and processes; and may, when requested, assist in implementing these recommendations, provided operational responsibility is not assumed.

c. There is no actual conflict [sic] of interest in his services or in those of his employer...."

"2. Education or Equivalent Experience Qualifications

a. Graduation from an accredited college or university or equivalent or five years or more of practical experience in management consulting, commerce, industry, government, education, or non-profit organizations in the application of the specialized knowledge, skills, tools, and techniques pertinent to one or more areas of management.

b. Beginning in 1975, applicants must have a bachelor's degree or equivalent from an accredited college or university.

3. Professional Requirements for Qualification

a. Five years or more of acceptable public practice in management consulting with one year of major responsibility for projects or major contributions to assignments in one or more areas of consulting competence. Three of the five years and the year of experience with major responsibility for projects or major contributions to assignments must have immediately preceded the date of application. Non-consulting related experience may be substituted as follows:

Years of acceptable public practice in management con- sulting	Years of non-consulting related experience required
5 or more	None
4	4
3	8

For the purpose of determining qualifications for membership, related experience is that acquired while in responsible charge of a project, an enterprise, or a function therein, and consistent with the principal areas of competence in which the candidate is practicing management consulting at the time of application.

b. Professional level of competence in one or more areas of management consulting."

11. Between 1969 and the date of the hearing, there were approximately 114 cases in which the Institute rejected applications for membership because the applicants were not qualified. In another 14 cases, disciplinary action was taken because a member was not adhering to the Institute's standards. In another 69 cases, membership was withdrawn and the right to use the appellation "CMC" was withdrawn.

CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law provides, in pertinent part, that:

"the practice of any...profession in which capital is not a material income producing factor and in which more than 80 per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or the members of the partnership or other entity, shall not be deemed an unincorporated business."

Although capital was not a material income-producing factor in the operation of petitioner, George D. Edwards & Company, and more than 80 percent of petitioner's income was derived from services personally rendered by the general partner, petitioner's activities as a management consultant did not constitute the practice of a profession within the meaning of the statute. Booz v. Bragalini 2 AD 2d 639 (3rd Dept. 1956), motion for leave to appeal denied 2 NY 2d 705.

The fact that George D. Edwards was a member of the Institute of Management Consultants, Inc. does not require a different conclusion in this case.

B. That petitioner's activities constituted the conduct of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; therefore, said activities are subject to taxation under section 701(a) of the Tax Law.

C. That it is noted that since Gail F. Edwards (the limited partner) did not participate in the activities of George D. Edwards & Company, the allowance for partners' services in the Statement of Audit Changes should have been reduced by \$1,371.49 for 1972 and

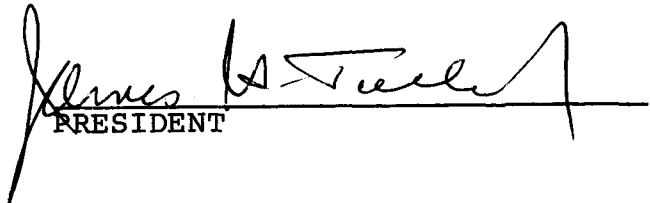
\$400.28 for 1973. However, since the additional deficiency was not asserted at or before the hearing, the deficiency cannot be increased at this time because of sections 689(d) and 722(a) of the Tax Law.

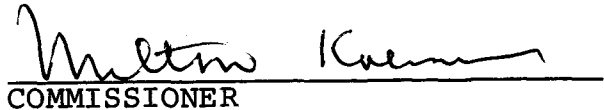
D. That the petition of George D. Edwards & Company is denied and the notices of deficiency as issued are sustained in full.

DATED: Albany, New York

STATE TAX COMMISSION

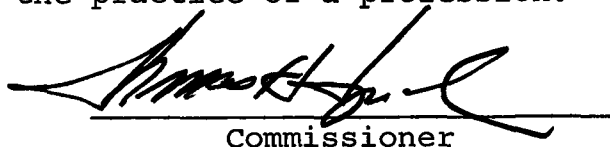
NOV 9 1979


PRESIDENT


COMMISSIONER

COMMISSIONER

I dissent. Petitioner has the requisite educational credentials, was a member of the Institute of Management Consultants, Inc., and rendered personal services in a professional and confidential manner. Petitioner was engaged in the practice of a profession.


Commissioner