

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

October 9, 1979

Ralph G. Hoxie
224 Laurel Cove Rd.
Oyster Bay, NY 11771

Dear Mr. Hoxie:

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:

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

Sincerely,

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

Ralph G. Hoxie :

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 1970 & 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 9th day of October, 1979, he served the within notice of Decision by certified mail upon Ralph G. Hoxie, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph G. Hoxie

224 Laurel Cove Rd.

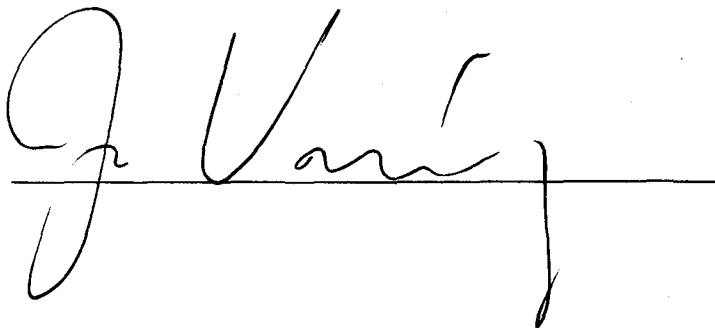
Oyster Bay, NY 11771

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 October, 1979.


Nancy Dominici


Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RALPH G. HOXIE
for Redetermination of a Deficiency or
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the
Years 1970 and 1972.

DECISION

Petitioner, Ralph G. Hoxie, 224 Laurel Cove Road, Oyster Bay, New York 11771, 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 1970 and 1972 (File No. 14851).

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 December 11, 1978 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (A. Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's activities constituted the practice of a profession which was exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Ralph G. Hoxie, timely filed New York State income tax resident returns for 1970 and 1972. He subsequently filed an amended return for 1970, reporting additional income which was omitted from the original return. He did not file unincorporated business tax returns for said years.

2. Petitioner reported wage income from the Center for the Study of the Presidency, the United States Air Force, Long Island University, and from business income derived from his activities labeled "consultant" on his personal

income tax return. The business gross income reported for 1970 and 1972 was as follows:

<u>Source</u>	<u>1970</u>
Franklin National Bank	22,000.00
Personal biography fee	5,000.00
Human Resources Center	2,400.00
American Friends of Chung-Ang University	3,219.75
Total business gross income	<u>32,619.75</u>

<u>Source</u>	<u>1972</u>
Sands Point Country Day School	17,000.00
Human Resources Center	2,400.00
University of Texas	150.00
Total business gross income	<u>19,550.00</u>

3. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency to petitioner. On it, the Bureau stated that the income derived from petitioner's activities as a consultant was subject to unincorporated business tax.

4. Petitioner, Ralph G. Hoxie, obtained a Bachelor's degree from the University of Northern Iowa, a Master's degree from the University of Wisconsin, and a Doctorate from Columbia University. All degrees were earned with a major in history and a minor in political science.

5. Petitioner, Ralph G. Hoxie, is a renowned historian, author, and educator. In addition, he has rendered services as a professor, dean, chancellor, educational administrator, lecturer, and president of various educational and historical organizations. He assisted in the founding of C.W. Post College and the Center for the Study of the Presidency, and has written a number of historical books and articles.

6. On June 30, 1969, petitioner entered into an agreement with the Franklin National Bank ("Franklin") for the purpose of writing its historical background. The agreement required that "the manuscript be a comprehensive, thorough and factually accurate history of the Franklin National Bank, complete

with index and table of contents, and shall be suitable for publication as a full length book, consisting of approximately 450 pages." The agreement also provided that Franklin would be the sole and exclusive owner of the book, but that petitioner would be entitled to fifty percent of all royalties, in addition to the stated fee paid for his researching and writing the manuscript.

7. The agreement of June 30, 1969 was terminated in June of 1970 by mutual consent and with the payment of a \$22,000.00 fee to petitioner. However, Franklin's chairman of the Board of Directors engaged petitioner and paid him a fee of \$5,000.00 to write his (the chairman's) personal biography. Neither manuscript was ever finished by petitioner or published in any form.

8. Petitioner received \$3,219.75 during 1970 from the American Friends of Chung-Ang University, for services rendered as their president and educational advisor. In addition, petitioner received \$2,400.00 from the Human Resources Center for services rendered as an educator.

9. Petitioner was retained by the Sands Point Country Day School during 1972, as the school's acting headmaster, and received a stipend of \$17,000.00. He also received \$2,400.00 from the Human Resources Center for services rendered as an educator.

10. Petitioner contended that his accountant erroneously labeled his activities as a consultant, and that all services rendered during 1970 and 1972 were performed as an historian, author and educator.

CONCLUSIONS OF LAW

A. That the nature and character of the services rendered by petitioner, Ralph G. Hoxie, as an educator, historian and author, during 1970 and 1972, was an occupation in which a professed knowledge of science and/or learning, gained by a prolonged course of specialized instruction and study was used by its practical application to the affairs of others, by advising, guiding and

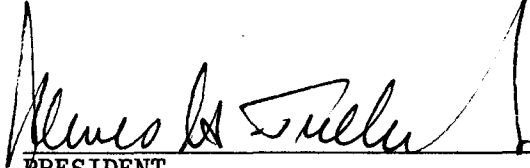
teaching them. Thus, the services rendered by petitioner, Ralph G. Hoxie, constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of Ralph G. Hoxie is granted and the Notice of Deficiency issued on February 24, 1976 for 1970 and 1972 is cancelled.

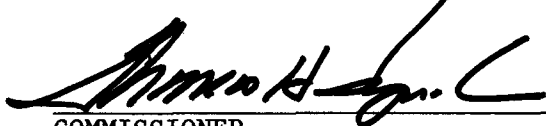
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER