

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert G. & Barbara W. Johnson :

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 1970-1973. :

State of New York

County of Albany

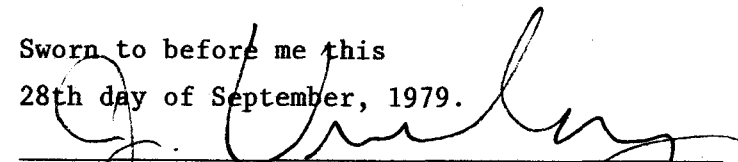
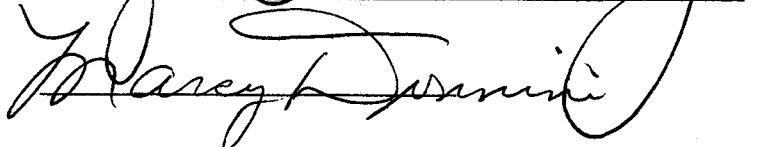
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Robert G. & Barbara W. Johnson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert G. & Barbara W. Johnson
26 Eldorado Dr.
Elnora, NY 12065

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.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Robert G. & Barbara W. Johnson
26 Eldorado Dr.
Elnora, NY 12065

Dear Mr. & Mrs. Johnson:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT G. JOHNSON and BARBARA W. JOHNSON : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1970, :
1971, 1972 and 1973. :

Petitioners, Robert G. and Barbara W. Johnson, 26 Eldorado Drive, Elnora, New York 12065, 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, 1971, 1972 and 1973 (File No. 13240).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 15, 1978 at 9:15 A.M. Petitioner appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner Barbara W. Johnson, a housewife, is liable for unincorporated business tax.

II. Whether petitioner Robert G. Johnson's activities as a designer and developer of instructional materials constitutes the practice of a profession which is exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Robert G. Johnson and Barbara W. Johnson, filed joint New York State income tax returns for the years 1970 through 1973. They did not file any unincorporated business tax returns for said years.

2. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners for the years 1970 through 1973, imposing unincorporated business tax of \$4,241.73, plus interest of \$641.74, for a total of \$4,883.57. This was done on the grounds that the activities of petitioner Robert G. Johnson constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax.

3. During the years in issue, petitioner Barbara W. Johnson was a housewife and had no separate income. She was not engaged in any business activities.

4. Petitioner Robert G. Johnson argued that the services he performed, as a designer and developer of instructional materials, were within the exempt field of professional teaching. He reasoned that programmed instruction consists of exposing students to information in such a way as to facilitate learning; therefore, one who designs and develops the systems and the materials is a teacher.

5. In 1948 petitioner Robert G. Johnson graduated with an A.B. degree from Hamilton College. From 1959 to 1966, he worked for the Boy Scouts of America, National Council, in the development of specifications, writing, production and testing of audio-visual materials for instructional purposes.

From 1966 to 1968, Mr. Johnson was employed by Argyle Publishing Corporation, where he worked under the personal direction and tutelage of Dr. John W. Blyth. Mr. Johnson learned behavioral and content analysis, objective writing, test design and programmed instruction development and validation.

Mr. Johnson was subsequently employed by Learning Technology Incorporated from 1968 to 1970. For both of the previous employers, he prepared programmed instructions which were used in the training of employees of various companies and governmental agencies.

6. During the years at issue, petitioner Robert G. Johnson was self-employed. He performed services as an independent consultant and developed self-instructional

materials for various principals including several New York State agencies, in order to train employees in the employer's operational procedures, or for other information related to specific job performance.

The information to be taught was provided by the principal or by a consultant with knowledge in the specialized field to be taught. Mr. Johnson would take that information and develop self-programmed instructional materials. Other than brief contacts during development and validation of the instructional materials, he had no direct personal contact with people using the materials.

7. The completed self-instructional materials were turned over to the principals and became their property. Petitioner Robert G. Johnson received no royalties or other payment for subsequent use of the materials by the principal.

8. Capital was not a material, income producing factor in petitioner's activities.

CONCLUSIONS OF LAW

A. That petitioner Barbara W. Johnson was not liable for any unincorporated business tax during the years in issue; the Income Tax Bureau is directed to delete her name from the Notice of Deficiency.

B. That while petitioner Robert G. Johnson possessed specialized knowledge and training for the services which he performed as a designer and developer of instructional materials, for which the professional exemption is claimed, the business conducted for the subject years cannot be characterized as a "profession", within the meaning and intent of section 703(c) of the Tax Law.

C. That the aforesaid activities of petitioner Robert G. Johnson, while characterized by the attainment of a specialized knowledge, do not serve the interests of others in their attainment of the science of programmed instruction, but rather serve the objectives of petitioner's principals. The services performed by Mr. Johnson deal with the conduct of a business, which is that of a consultant and not that of a professional teacher. Teaching is only incidental to the consulting

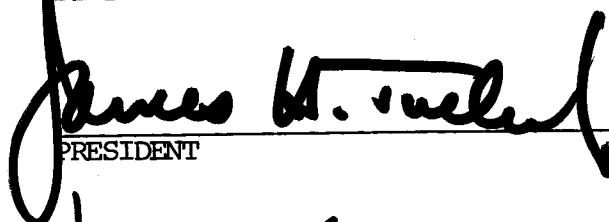
business, in that the end product will be used for learning. The self-instructional materials do not convey Mr. Johnson's own knowledge to the students, but rather the knowledge of the principals. Thus, such services do not constitute the practice of a "profession" as defined by statute.

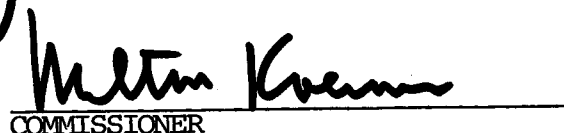
D. That the aforesaid activities of petitioner Robert G. Johnson during the years 1970 through 1973, constituted the carrying on of an unincorporated business, and that his income derived therefrom was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

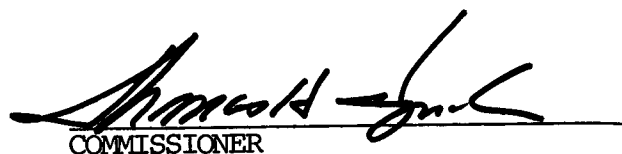
E. That the petition of Robert G. and Barbara W. Johnson is granted to the extent indicated in Conclusion of Law "A" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER