

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HERMAN NEEDLE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1971 and 1972.

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 6th day of April, 1979, she served the within  
Notice of Decision by (certified) mail upon Herman Needle

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Herman Needle  
67-38 108th Street  
Forest Hills, NY 11375

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

Sworn to before me this

6th day of April, 1979

Marilyn J. Papineau

John Huhn



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW-YORK 12227

April 6, 1979

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


Mr. Herman Needle  
67-38 108th Street  
Forest Hills, NY 11375

Dear Mr. Needle:

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,  
  
Joseph Chyrywat  
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
HERMAN NEEDLE : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business Tax :  
under Article 23 of the Tax Law for the :  
Years 1971 and 1972. :

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Petitioner, Herman Needle, 67-38 108th Street, Forest Hills, New York 11375, 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 and 1972 (File No. 13937).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1978 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Robert Felix, Esq., of counsel).

ISSUE

Whether petitioner's activities as a building appraiser and consultant constituted the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Herman Needle, and his wife, Pauline Needle, timely filed New York State resident income tax returns for 1971

and 1972. Petitioner did not file unincorporated business tax returns for said years.

2. On February 24, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting unincorporated business tax of \$1,224.62, plus interest and penalty of \$628.78, for a total of \$1,853.40.

3. During the years at issue, petitioner, Herman Needle, performed services as a building appraiser and consultant. His primary function was to ascertain the correct value of a building or the replacement cost of a damaged building. He performed such services for insurance companies, adjusters, corporations and law offices and appeared in court as an expert witness regarding the value of damaged buildings.

4. Petitioner, Herman Needle, received a degree in civil engineering from the Polytechnic Institute of Brooklyn in 1921. He worked in the field as a building contractor and appraiser for the next 50 years. In 1971 petitioner no longer did building contracting, but kept the business name of Needle Construction Company for his appraisal and consulting work. His occupation did not require a license and he did not have one. He did not take any courses or instruction to develop the skills used in his appraisal and consulting activities, but rather acquired his skills through his 50 years of experience as a building contractor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Herman Needle, as a building appraiser and consultant during 1971 and 1972, while requiring special knowledge and experience, did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law (Matter of Harvey B. Rosenbloom v. State Tax Commission, 44 AD 2d 69,353 NYS 2d 544).

B. That the aforesaid activities of petitioner, Herman Needle, during 1971 and 1972 constituted the carrying on of an unincorporated business; thus, his income derived therefrom was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Herman Needle is denied and the Notice of Deficiency issued February 24, 1975 is sustained, together with such additional interest and penalty as may be lawfully owing.

DATED: Albany, New York  
April 6, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER