

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM GOLDSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(x)~~ 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1967, :
1968 and 1969.

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 14th day of February, 1979, she served the within
Notice of Decision by (certified) mail upon William Goldstein

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

William Goldstein
1410 Blue Spruce Lane
Wantagh, New York 11793

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)~~
~~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

14th day of February, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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WILLIAM GOLDSTEIN

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) ~~or Period(s)~~ 1967, :
1968 and 1969.

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 14th day of February , 1979 , she served the within
Notice of Decision by (certified) mail upon Thomas Hirschmann, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Thomas Hirschmann, Esq.
c/o Augello & Pezold, P.C.
120 Main Street, P.O. Box Z
Huntington, NY 11743

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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

William Goldstein
1410 Blue Spruce Lane
Wantagh, New York 11793

Dear Mr. Goldstein:

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 ~~75~~ **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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM GOLDSTEIN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968 and 1969.	:	

Petitioner, William Goldstein, 1410 Blue Spruce Lane, Wantagh, New York 11793, 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 1967, 1968 and 1969 (File No. 00244).

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 March 10, 1978 at 9:15 A.M. Petitioner appeared by Thomas Hirschman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's activities as a traffic consultant and freight-bill rate specialist constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner, William Goldstein, timely filed New York State income tax resident returns for 1967, 1968 and 1969, and reported net business income from his activities as a "traffic consultant." He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities as a traffic consultant were subject to unincorporated business tax. On November 26, 1973, it issued a Notice of Deficiency to petitioner, asserting unincorporated business tax of \$2,714.55, plus \$725.79 in interest, for a total of \$3,440.34.

3. Petitioner, William Goldstein, was a self-employed traffic consultant and freight-bill rate specialist, doing business under the name and style of Gold Medal Audits. His primary activities involved the recovery of excess funds paid for transportation services and the provision of information for the purpose of making existing operations more efficient and economical. Petitioner's clients consisted of freight forwarders and shipping associations which utilized his expertise in the mass movement of freight railroad box cars to and from various points within the continental United States.

4. Petitioner's clients conducted their railroad shipping activities pursuant to ratings, rules and regulations which were set forth in a particular tariff or in a number of tariffs, as the situation may require. Since his services required extensive use of various tariffs, petitioner has to be fully knowledgeable of the application and use of several hundred existing tariffs, together with additional supplemental information. Petitioner was also required to be familiar with research techniques in his field and with decisions rendered by the Tariff Bureaus and Interstate Commerce Commission.

5. Petitioner received a Bachelor of Science degree in transportation and traffic management from New York University in 1952 and subsequently became an expert in his field through gainful employment and experience.

6. Petitioner was so considered by many freight forwarders and shipping associations and was frequently required to testify at hearings conducted by the Tariff Bureau.

7. Petitioner's income was derived solely from personal services which he rendered and capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the word "profession" implies attainments in professional knowledge in some department of science or learning and not mere skill and application of knowledge. The performance of services dealing with the conduct of business itself, including the promotion of sales or services of such business and consulting services, does not constitute the practice of a profession even though the services involve the application of a specialized knowledge. Although petitioner's activities as a traffic consultant and freight-bill rate specialist require special knowledge and skill, the nature of these services does not constitute a profession within the meaning and intent of section 703(c) of the Tax Law.

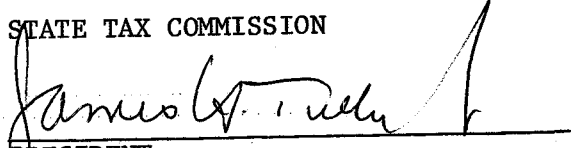
B. That the aforesaid activities of petitioner, William Goldstein, during 1967, 1968 and 1969, constituted the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703(a) of the Tax Law; thus, the income derived therefrom is subject to unincorporated business tax, pursuant to section 701(a) of the Tax Law.

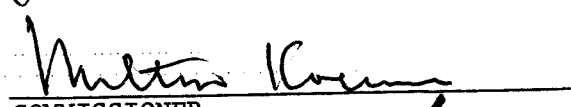
C. That the petition of William Goldstein is denied and the Notice of Deficiency issued November 26, 1973 is sustained, together with such additional interest as may be lawfully owing.

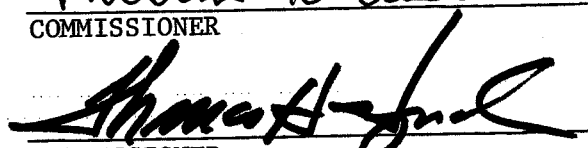
DATED: Albany, New York

February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER