

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Stephen Gardos

:

:

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 Year 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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Stephen Gardos, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Gardos
58 Louisiana Ave.
Bronxville, NY 10708

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
3rd day of October, 1980.

Douglas Bank

J. Vredenburg

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

October 3, 1980

Stephen Gardos
58 Louisiana Ave.
Bronxville, NY 10708

Dear Mr. Gardos:

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

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
STEPHEN GARDOS
for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Year 1972.

DECISION

Petitioner, Stephen Gardos, 58 Louisiana Avenue, Bronxville, New York 10708, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1972 (File No. 11492).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 22, 1980 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's activities as a computer consultant constituted the practice of a profession of which the income derived therefrom is exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Stephen Gardos, timely filed a joint New York State Income Tax Resident Return for the year 1972 with his wife, Barbara Gardos, wherein he reported business income of \$21,337.00 derived from his activities as a computer consultant. He did not file an unincorporated business tax return for said year.

2. On November 12, 1974, the Audit Division issued petitioner a Statement of Audit Changes for the years 1971 and 1972 wherein it held that his "activities as a computer consultant constitutes the carrying on of an unincorporated business and the net income derived from this source is subject to the unincorporated business tax". Accordingly, a Notice of Deficiency was issued against petitioner on November 24, 1975, asserting unincorporated business tax for the year 1972 of \$663.83, penalties pursuant to sections 685(a)(1) and 685(a)(2) of \$255.57, for failure to file such tax return and failure to pay the tax determined to be due, and interest of \$129.99, for a total due of \$1,049.39. No deficiency was asserted for 1971 since petitioner's net business income derived during said year was too nominal to produce an unincorporated business tax liability.

3. During the year 1972 petitioner was a computer software consultant. His activities consisted of designing and programming computers for banks and brokerage houses. His services were contracted for either directly by the client banks and brokerage houses, or by consulting firms dealing with such businesses. Review of the sources of petitioner's business income indicated that the latter method was used exclusively during said year.

4. Petitioner holds a Bachelor of Science degree in chemistry from City College of New York and a Masters degree in Computer Science from Steven's Institute of Technology.

5. Petitioner contended that there were no licensing requirements controlling the type of activities of which he was engaged.

6. Petitioner was a member of the Association for Computer Machinery.

7. Petitioner contended that his business income is exempt from the imposition of unincorporated business tax since his activities constituted the practice of a profession and 100 percent of his gross income was derived from personal services actually rendered by him.

8. Petitioner testified that during the year at issue he had reviewed the instructions for filing an unincorporated business tax return with his accountant, who advised him that his income was not subject to said tax.

CONCLUSIONS OF LAW

A. That the activities engaged in by petitioner, Stephen Gardos, during the year 1972, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

B. That petitioner's activities as a computer consultant during the year 1972 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Accordingly, the income derived therefrom is subject to unincorporated business tax.

C. That the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2), for failure to file an unincorporated business tax return and failure to pay the tax, respectively, are waived due to reasonable cause.

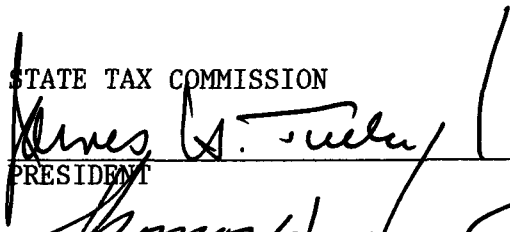
D. That the petition of Stephen Gardos is granted to the extent provided in Conclusion of Law "C" (supra), and that said petition is, in all other respects, denied.

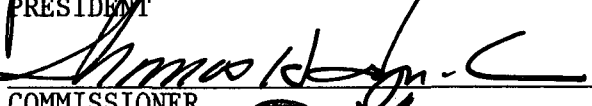
E. That the Audit Division is hereby directed to modify the Notice of Deficiency dated November 24, 1975 to be consistent with the decision rendered herein.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER