

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Charles A. Moses :

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 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 19th day of September, 1980, he served the within notice of Decision by certified mail upon Charles A. Moses, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

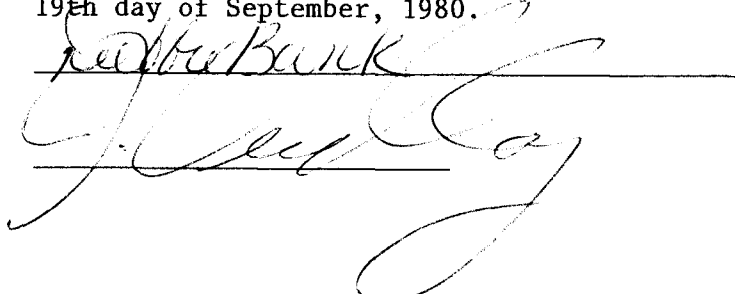
Charles A. Moses  
312 S. Elm Dr., #6  
Beverly Hills, CA 90212

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

19th day of September, 1980.

  
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\_\_\_\_\_

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

September 19, 1980

Charles A. Moses  
312 S. Elm Dr., #6  
Beverly Hills, CA 90212

Dear Mr. Moses:

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

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In the Matter of the Petition	:	
of	:	
CHARLES A. MOSES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1973.	:	

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Petitioner, Charles A. Moses, 312 South Elm Drive, #6, Beverly Hills, California 90212, 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 1973 (File No. 22494).

On January 20, 1980, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioner's activities as a public relations consultant constituted the carrying on of an unincorporated business of which the income derived therefrom is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Charles A. Moses, timely filed a joint New York State Income Tax Resident Return with his wife for the year 1973 wherein he reported business income derived from his activities as a "Publicist". He did not file an unincorporated business tax return for said year.

2. On April 4, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held the income derived from his business activities subject to the imposition of unincorporated business tax. Accordingly, a Notice of Deficiency was issued against petitioner on June 26, 1978, asserting unincorporated business tax of \$559.44, sections 685(a) (1) and 685(a) (2) penalties of \$265.73, plus interest of \$176.11, for a total due of \$1,001.28.

3. Petitioner contended that his business income was exempt from the imposition of unincorporated business tax since he was engaged in a profession. In a letter dated June 9, 1977, petitioner stated that his "occupation was, and is, Public Relations Consultant" and that he "dealt in services - - consulting".

4. Petitioner filed and paid unincorporated business tax for the years 1970, 1971 and 1972, during which years he was engaged in the same type of activities as the year at issue herein. He contended that such taxes were wrongfully paid since he did not have a clear understanding of the nature of such taxes and he relied on an accountant to prepare his returns.

5. Petitioner's net business income reported for 1973 was \$18,964.60. He contended that \$6,650.00 of said amount was exempt from the imposition of unincorporated business tax on the grounds that it was derived from an original screen story which he wrote and subsequently sold to Brut Productions, Inc. No documentation or additional information was submitted in connection with the sale of petitioner's screen story.

6. Petitioner argued that the National Labor Relations Board, in addition to certain unspecified Federal statutes, qualified his work as a profession.

7. Petitioner submitted three letters from individuals familiar with his activities wherein they classify petitioner as a professional.

8. Petitioner contended that the application of unincorporated business tax to the income derived from his business activities is "arbitrary and unfair".

9. No documentation or information was submitted by petitioner detailing his educational background or the exact nature of his activities during the year at issue.

#### CONCLUSIONS OF LAW

A. That tax deductions and exemptions depend upon clear statutory provisions and the burden is upon the taxpayer to establish a right to them (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193; Matter of Central Office Alarm Co. v. State Tax Commission, 58 A.D.2d 162). Petitioner, in the instant case, has not met his burden required under sections 689(e) and 722 of the Tax Law to show that the nature of his business activities constituted the practice of a profession, of which the income derived therefrom is exempt from the imposition of unincorporated business tax.

B. That it seldom suffices, and is often immaterial, in the resolution of tax controversies to demonstrate that in application a particular statute or regulation works even a flagrant unevenness. (Staley, Jr. J. Dissenting Opinion, Gurney v. Tully, 67 A.D.2d 303).

C. That the performing 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 within the meaning and intent of section 703(c) of the Tax Law.

D. That petitioner Charles A. Moses' activities during the year 1973 as a public relations consultant constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and, as such, his income derived therefrom is subject to the imposition of unincorporated business tax.

E. That the petition of Charles A. Moses is denied and the Notice of Deficiency dated June 26, 1978 is sustained, together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

*[Handwritten signatures and scribbles]*

SEP 12 1980