

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Lemont K. Richardson :

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 1974. :

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 2nd day of May, 1980, he served the within notice of Decision by certified mail upon Lemont K. Richardson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lemont K. Richardson
Matthiessen Park
Irvington, NY 10533

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
2nd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

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Lemont K. Richardson :

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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 1974. :

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 2nd day of May, 1980, he served the within notice of Decision by certified mail upon George Rowe, Jr. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. George Rowe, Jr.
30 Rockefeller Plaza
New York, NY 10020

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
2nd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 2, 1980

Lemont K. Richardson
Matthiessen Park
Irvington, NY 10533

Dear Mr. Richardson:

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
George Rowe, Jr.
30 Rockefeller Plaza
New York, NY 10020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEMONT K. RICHARDSON : DECISION
for Redetermination of a Deficiency or for Re- :
fund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Year 1974. :

Petitioner, Lemont K. Richardson, Matthiessen Park, Irvington, New York 10533 filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1974 (File No. 20300).

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 July 19, 1979 at 2:45 P.M. Petitioner appeared by George Rowe, Jr. Esq. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner Lemont K. Richardson's activities as an economic consultant constituted the practice of a profession, the income of which is exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Lemont K. Richardson filed a New York State combined income tax return with his wife for the year 1974. He did not file an unincorporated business tax return for said year.

2. On August 13, 1976 the Audit Division issued a Statement of Audit Changes wherein it held that petitioner's activities as an economic consultant constituted the carrying on of an unincorporated business. Accordingly, on June 27, 1977, a Notice of Deficiency was issued against petitioner asserting unincorporated business tax in the amount of \$989.62, penalty of \$356.25, and interest of \$185.05, for a total due of \$1,530.92.

3. Petitioner contended that he was a professional economist, conducting his business under the name of Richardson Associates, a sole proprietorship, located at 245 Park Avenue, New York, New York.

4. Petitioner contended that the nature of the activities of an economic consultant are identical to those of an economist, and he listed himself as an economic consultant for the sole reason that he was self-employed. When he was an employee, prior to the year at issue, he designated himself as an economist.

5. Petitioner received a Bachelor of Arts degree in Economics from the University of Wisconsin in 1952. He received a Master of Arts in American History from Cornell University in 1953 and a Ph.D. degree in Economics from the University of Wisconsin in 1956.

6. Petitioner was employed as an economist in private industry from 1956 to 1974. During the year 1974 he formed his own business, Richardson Associates.

7. Petitioner has had several articles published over the years with various trade papers.

8. Petitioner during the years 1967 and 1968, was an Adjunct Professor of Finance for the Columbia Graduate School of Business Administration. During the years 1974 through 1977, he was an Adjunct Professor of Finance for the Graduate School of Financial Sciences, the American College.

9. Petitioner contended that becoming a professional economist requires training in the general principals of economics, economic theory, economic history, comparative economic systems and statistics. That further training is required in a field of specialization, which culminates in a doctoral dissertation in that specific field. As an economist, petitioner must maintain a continuing awareness of current economic development on a world wide basis, as well as a continuing awareness of new research and analytical concepts. All this is accomplished through participation in professional associations, readings of business and research publications, and participation in seminars. Petitioner then applies this advanced knowledge and training to the analysis of specific problems and the consequences or alternative courses of action in terms of economic costs or benefits for attacking these problems.

10. Petitioner specializes in the analysis of financial and regulatory problems in the energy and transportation sectors.

11. Petitioner is a member of the National Association of Business Economists and the National Economics Club.

12. During 1974 Richardson Associates had gross receipts in the amount of \$106,358.00. Of this amount, \$96,356.00 was derived from agencies of the federal government under professional service contracts. The government agencies for whom petitioner rendered services for in 1974 were the Cost of Living Council, the Federal Energy Administration and the Federal Railroad Administration. Fees collected from these federal agencies represented 90.6% of the total gross receipts.

13. Some studies performed by petitioner for the federal government in 1974 were;

- A. To develop a forecast of aviation jet fuel prices in the international market based on certain crude cost assumptions and refinery yields,
- B. To identify and analyze various options for providing federal financing to private electric utility generation plant construction programs, and
- C. To identify and analyze the financial planning options and organization structures for carrying forward the 1.9 billion dollar Northeast Corridor rail system improvement program mandated by the Regional Rail Reorganization Act of 1973.

14. Petitioner had three associates working for him during 1974 on an "as needed" basis. They were also economists, all holding advanced degrees.

15. No licensing requirements existed in 1974 for the Economist profession.

16. More than 80 percent of petitioner's gross income was derived from or directly attributable to personal services actually rendered by him and his entity.

17. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That 20 NYCRR 203.11(b) (1) (i) provides:

"[T]he term other profession includes any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding or teaching them..."

It is evident from petitioner's educational background and the nature of services which he rendered, that his activities were of a professional nature.

B. That 20 NYCRR 203.11(b) (1) (i) further states:

"[T]he 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 even though the services involve the application of a specialized knowledge."

C. That petitioner's services rendered to agencies of the federal government were not services dealing with the conduct of business itself. As such, the income derived therefrom is exempt from the imposition of unincorporated business tax within the meaning and intent of Section 703(c) of the Tax Law.

D. That petitioner's income derived from private industry in the amount of \$10,002.00, although subject to the unincorporated business tax, yields no liability when properly reduced by allowable deductions, credits and exemptions.

E. That the petition of Lemont K. Richardson is hereby granted and the Notice of Deficiency dated June 27, 1977 is cancelled.

DATED: Albany, New York

MAY 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

I dissent


COMMISSIONER