STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Marvin Schick :

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 Marvin Schick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marvin Schick
1529 56th St.
Brooklyn, NY 11219

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.

Debbie Bank

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

September 19, 1980

Marvin Schick
1529 56th St.
Brooklyn, NY 11219

Dear Mr. Schick:

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	:	
MARVIN SCHICK	:	DECISION
for Redetermination of a Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Year 1973.	:	

Petitioner, Marvin Schick, 1529 56th Street, Brooklyn, New York 11219, 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. 18482).

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 February 15, 1980 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner's reported business income was derived from activities which constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Marvin Schick, timely filed a New York State Combined Income Tax Return for the year 1973 wherein he reported income from a "business or profession" of $21,972.00. He did not file a New York State unincorporated business tax return for said year.

2. On February 28, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held his business income subject to the imposition of unincorporated business tax. Penalties were imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file an unincorporated business tax return and failure to pay the unincorporated business tax determined to be due. Additionally, penalties were imposed pursuant to section 685(c) for failure to file a declaration of estimated tax. Accordingly, on February 28, 1977, a Notice of Deficiency was issued against petitioner asserting unincorporated business tax of $691.77, penalties of $420.13, and interest of $149.10, for a total due of $1,261.00.

3. During the year at issue, petitioner derived gross earned income, other than wages, from four sources as follows:

SOURCE	AMOUNT
City of New York	$14,875.00
Ford Foundation	4,500.00
Fund for the City of New York	1,350.00
Beth Rachel School	6,000.00
TOTAL	$26,725.00

Said total, which was reported by petitioner on a Federal Schedule C, was derived from his principal business activity described thereon as "Consultant Services". Petitioner's net business income reported, after reduction for allowable business expenses, was $21,972.00, the income at issue herein.

4. Petitioner contended that his status with the City of New York was that of an employee. He further contended that the services rendered for both the Ford Foundation and the Fund for the City of New York were so interrelated with his employee services for the City of New York, so as to render the income derived therefrom as exempt from the imposition of unincorporated business tax.

5. In February 1970, petitioner joined the administration of Mayor John V. Lindsay of New York City. His initial position was "Assistant to the Mayor for Intergroup Relations". Subsequently, in early 1972, his position was changed to "Administrative Assistant", which position he kept until December 31, 1973. His principal areas of responsibility were higher education, problems of the aging, ethnic affairs and human rights.

6. During 1970 and 1971, petitioner was on an unpaid leave of absence from Hunter College, where he was a tenured faculty member teaching political science prior to joining the Lindsay administration. During 1972, petitioner was obliged to surrender tenure when, at the urging of the Mayor, he retained his city position, but he advised the Mayor and other city officials of his desire to return to college teaching.

7. During 1973, a teaching opportunity arose for petitioner. He informed the Mayor and other superior city officials of his desire to accept the teaching position. It was then agreed that in order for him to maintain compliance with certain policies and rules of the city government, he would be allowed to accept the teaching position and still work for the administration on a regular, full-time basis by having his payroll status changed to a budget line item designated for a consultant. Under this proposed payroll status, petitioner was to be paid on a three day work week basis although he would still be required to work a five day work week. Petitioner accepted these terms, and in the late spring of 1973 he began teaching evenings for the New School of Social Research, New York City.

8. Subsequent to petitioner's payroll status being changed, he continued to work daily from the same office used prior to the change, which was maintained by the City of New York. Additionally, he continued to have the same staff

of city employees, to report to the same officials, and to maintain the same areas of responsibilities. Petitioner argued that the sole effect of his change in payroll status was to enable him to maintain regular outside employment.

9. Petitioner's activities as a New York City official were supervised and controlled by the Mayor, Deputy Mayor and the Mayor's Chief of Staff.

10. Petitioner's earnings from his Administrative Assistant position during 1973, prior to his payroll status change, were reported on his tax return as wages for which he received a Wage and Tax Statement.

11. During 1973, petitioner received a "Study and Travel Grant" from the Ford Foundation in the amount of $4,500.00. This sum was paid to petitioner for writing a paper dealing with his experiences and thoughts on ethnic affairs in New York City. Petitioner testified that such grants are given as a matter of course to public officials leaving office.

12. During 1973, petitioner received $1,350.00 from the Fund for the City of New York. The Fund, which is the Ford Foundation offshoot in New York, sponsored the preparation of a series of "transition papers" prepared by the outgoing Lindsay administration for the incoming Beame administration. Petitioner was asked to, and prepared a paper dealing with the City University of New York and higher education issues.

13. Petitioner, in a brief submitted subsequent to the hearing, advised that he no longer contested the imposition of unincorporated business tax on the total income derived from the Beth Rachel School for services substantially rendered at his personal residence which consisted of consulting on refugee and State Department related matters, and the preparation of various documents.

14. Petitioner claimed various business expenses on his Federal Schedule C. No breakdown was submitted to indicate which sources said expenses were attributable to.

CONCLUSIONS OF LAW

A. That petitioner's income of $14,875.00, derived by him as an Administrative Assistant to Mayor John V. Lindsay during 1973, was income derived from services rendered as an employee. As such, said income is exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(b) of the Tax Law.

B. That since petitioner's income, derived from the Ford Foundation and the Fund for the City of New York, of $4,500.00 and $1,350.00, respectively, was from irregular, isolated activities, closely associated with petitioner's employee service, said income is deemed not to be from activities which constitute the carrying on of an unincorporated business. Accordingly, said income is not subject to the imposition of unincorporated business tax within the meaning and intent of section 703(a) of the Tax Law.

C. That petitioner's income of $6,000.00 derived from the Beth Rachel School during 1973 was from activities which constituted the carrying on of an unincorporated business. Accordingly, said income is subject to the imposition of unincorporated business tax.

D. That the petition of Marvin Schick is granted to the extent provided in Conclusions of Law "A" & "B", supra; and that said petition is in all other respects denied.

E. That the Audit Division is directed to modify the Notice of Deficiency dated February 28, 1977 to be consistent with the decision rendered herein.

DATED: Albany, New York

SEP 1 9 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER