

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Carl E. & Faye J. Silver :  
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. :

AFFIDAVIT OF MAILING

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Carl E. & Faye J. Silver, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl E. & Faye J. Silver  
Brookhaven Medical Arts Bldg.  
4 Schoenfeld Blvd.  
Patchogue, NY 11772

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  
5th day of September, 1980.

*Debbie Bank*

*J. Vredenburg*

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

September 5, 1980

Carl E. & Faye J. Silver  
Brookhaven Medical Arts Bldg.  
4 Schoenfeld Blvd.  
Patchogue, NY 11772

Dear Mr. & Mrs. Silver:

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	:	
CARL E. SILVER and FAYE J. SILVER	:	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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Petitioners, Carl E. Silver and Faye J. Silver, 4 Schoenfeld Boulevard, Patchogue, New York 11772, 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. 18211).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 8, 1980 at 9:15 A.M. Petitioner Carl E. Silver appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner Carl E. Silver's activities as a marriage counselor constituted the practice of profession exempt from unincorporated business tax pursuant to section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Carl E. Silver and Faye J. Silver, filed a New York State Income Tax Resident Return for 1973. Petitioner Carl E. Silver did not file an unincorporated business tax return for subject year.

2. On January 24, 1977, the Audit Division issued a Statement of Audit Changes to petitioners, on the ground that the income derived by petitioner Carl E. Silver as a marriage counselor was subject to unincorporated business

tax. Accordingly, it issued a Notice of Deficiency dated April 11, 1977 for \$901.51 unincorporated business tax, plus interest of \$202.09, for a total due of \$1,103.60.

3. During the year at issue, petitioner Faye J. Silver was a housewife. She was not engaged in her husband's business activities.

4. Petitioner Carl E. Silver has been engaged in family counseling for a period in excess of twenty (20) years. For the subject year he rendered services which included individual and group psychotherapy and marriage counseling. He rendered such services from his office maintained at the Brookhaven Medical Arts Building.

5. Petitioner held a Bachelor of Arts, Bachelor of Divinity and Master's of Divinity degrees. In addition, petitioner completed post graduate courses at the William Alanson White Institute of Psychiatry, Psychoanalysis and Psychology, from which he received a certificate, under date of January 14, 1961, which stated "In recognition of the satisfactory completion of the prescribed courses to ministers in the psychology of interpersonal relations." Admission to said institute is granted only to applicants with advanced degrees. Petitioner also completed over 300 hours of personal supervision for marriage and family counseling during the years 1954 through 1965.

6. Petitioner became an associate member of the American Association of Marriage and Family Counselors on October 19, 1978. However, petitioner contended that he was eligible and had the educational prerequisites to become an associate member of the American Association of Marriage and Family Counselors during 1973.

7. Petitioner was not eligible for clinical membership in the American Association of Marriage and Family Counselors which required that he obtain

fifty additional hours of supervision with an approved supervisor of his choice.

8. The petitioner's educational background, together with the 300 hours of personal supervision provided the background and discipline required of a marriage counselor and was used exclusively for working with families, divorced couples and family relationships.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner Carl E. Silver during 1973 constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

That petitioner Carl E. Silver's failure to become an associate member of the American Association of Marriage and Family Counselors prior to the subject year does not alter the conclusion that his activities constituted a profession. That petitioner attained the requisite education, training and competence, required of a professional many years previous to 1978 (the year in which he became an associate member), can be gleaned by the association's granting him an associate membership based solely on his application. That section 703(c) of the Tax Law provides in pertinent part, that:

"the practice of any...profession in which capital is not a material income producing factor and in which more than 80 per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or the members of the partnership or other entity, shall not be deemed an unincorporated business."

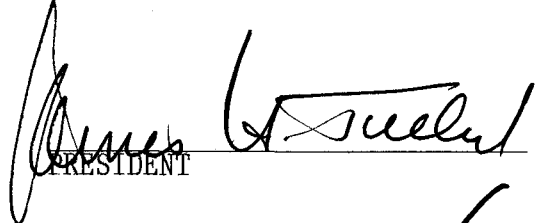
That capital was not a material income producing factor in petitioner's practice, and more than 80 percent of petitioner's income was derived from services personally rendered. Therefore, the petitioners activities shall not be deemed an unincorporated business within the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of Carl E. Silver and Faye J. Silver is granted;  
that the Notice of Deficiency issued April 11, 1977 is cancelled.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER