

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lloyd E. & Margaret L. Slater :
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 Years 1971 & 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 2nd day of May, 1980, he served the within notice of Decision by certified mail upon Lloyd E. & Margaret L. Slater, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lloyd E. & Margaret L. Slater

Putnam Station, NY 12861
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
ALBANY, NEW YORK 12227

May 2, 1980

Lloyd E. & Margaret L. Slater
Putnam Station, NY 12861

Dear Mr. & Mrs. Slater:

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 :

LLOYD E. SLATER and MARGARET L. SLATER :

DECISION

for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years :
1971 and 1972.

Petitioners, Lloyd E. Slater and Margaret L. Slater, Putnam Station, New York 12861, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1971 and 1972 (File No. 00552).

A formal hearing was held before Louis M. Klein, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 16, 1977 at 1:45 P.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Marilyn M. Kaltenborn, Esq., of counsel).

ISSUES

I. Whether the activities of petitioner Dr. Lloyd E. Slater during the years 1971 and 1972, as a tax-policy consultant, constituted the practice of a profession within the intent of section 703(c) of the Tax Law so as to exempt petitioner from the payment of unincorporated business tax.

II. Whether the Notice of Deficiency dated March 31, 1975 is correct, if petitioners are determined to be subject to the payment of unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Lloyd E. Slater and Margaret L. Slater, timely filed New York State income tax returns for the years 1971 and 1972, but failed to file New York State unincorporated business tax returns for the years 1971 and 1972.

2. On March 19, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, imposing unincorporated business tax for the years 1971 and 1972 in the sums of \$236.08 and \$274.11, respectively, on the grounds that petitioner Lloyd E. Slater's activities as a tax consultant do not constitute the practice of a profession under Article 23 of the Tax Law, and that the income earned therefrom is deemed subject to unincorporated business tax. With interest and penalties, the amount claimed to be due totalled \$791.91. Accordingly, a Notice of Deficiency dated March 31, 1975 was issued for that amount.

3. Thereafter, petitioners filed a petition for redetermination of the deficiency, which petition was dated May 6, 1975.

4. During 1971 and 1972, petitioner Dr. Lloyd E. Slater was employed by the Senate of the State of New York as a consultant on tax policy, pursuant to annual contracts, for which compensation he was expected to work the equivalent of one-half of an employee's full time.

5. The annual contracts between petitioner Dr. Lloyd E. Slater and the State of New York refer to petitioner as an independent contractor and not an employee, and provide that the agreements are intended to secure the personal services of petitioner because of his professional and technical qualifications and experience.

6. According to Roger C. Thompson, Secretary of the Senate, petitioner was retained by the Senate because he is an economist who has become a nationally recognized authority on state and local taxation policies and on the effects of tax policies on economic development and business climate.

7. Petitioner Dr. Lloyd E. Slater received his B.S. degree in Economics from Purdue University and a Ph.D. degree in Economics from Cornell University.

8. Petitioner Dr. Lloyd E. Slater has held many positions of distinction within the field of economics and tax, among them: associate director of Finance for the State Colleges at Cornell University; staff director for the Interdepartmental Tax Structure Study Committee of New York State and Deputy Commissioner for Tax Research in the New York State Department of Taxation and Finance. In addition, petitioner Dr. Lloyd E. Slater has served on the Board of Directors of the Tax Institute of America and the National Tax Association, and has published several articles on economics in the field of agriculture.

9. The principal duties of petitioner, in his capacity as a consultant to the New York State Senate on tax policy, were threefold:

- (a) Explaining to the State Senators and their staffs, the factual content of New York's tax laws, the policy considerations leading to adoption of the existing features of these laws, and the effects of various tax policies on economic growth and job development.
- (b) Advising the State Senate as to possible improvements in the State tax structure and the effects of any such changes.
- (c) Evaluating legislation proposing changes in tax structure of the State, with particular emphasis on the effects these changes would have on the State's economic climate and on the development and retention of job opportunities in this State.

10. Petitioner and the Income Tax Bureau entered a stipulation on the record, as follows:

"That in earning petitioner's income as a tax policy consultant, one, capital is not an income producing factor and two, more than eighty percent of the gross income for this activity for the taxable years in question is directly attributable to personal services actually rendered by the petitioners".

CONCLUSIONS OF LAW

A. That the Tax Law does not contain a definition of the term "professions".

Black's Law Dictionary, Fourth Edition, however, defines profession as follows:

"A vocation, calling, occupation or employment involving labor, skill, education, special knowledge and compensation or profit, but the labor and skill involved is predominately mental or intellectual, rather than physical or manual."

B. That 20 NYCRR 203.11(b) (which was not effective until February 1, 1974)

defines "other professions" as follows:

"...the 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, and in serving their interests or welfare in the practice of an art or science founded on it".

C. That petitioner's services as a consultant on tax policy to the Senate of the State of New York require that degree of specialized learning, knowledge and expertise so as to qualify him as one practicing a profession in accordance with the definition of that term both as set forth in Black's Law Dictionary and 20 NYCRR 203.11(b).

D. That petitioner brings to his position as a consultant on tax policy to the New York State Senate unusual expertise in his field gained through a lengthy and successful course of study resulting in the awarding to petitioner of a Ph.D. degree in Economics, together with a distinguished career in the field of public service. Petitioner has clearly attained such a degree of prominence in his field as to have caused the New York State Senate to have sought his services as a consultant.

E. That petitioner's services to the New York State Senate are distinguishable from those of the unsuccessful litigants in cases cited by the Income Tax Bureau in that in each of those cases, the economist seeking the professional exemption was a consultant to a private business interest, thereby coming within the exclusion contained in the current regulation, to wit:

"The performance of services dealing with the conduct of business itself, including the promotion of sales or services dealing with the conduct of business itself, including the promotion of sales or services of such business and consulting services, do not constitute the practice of a profession even though the services involve the application of a specialized knowledge". [20 NYCRR 203.11(b)].

Dr. Slater was not serving as a consultant to a business, but rather to the New York State Legislature. His knowledge and expertise is clearly used in serving the interests of others.

F. That inasmuch as all that had to be established on this hearing was the determination that petitioner was practicing a profession in order to qualify him for an exemption from unincorporated business tax, it having been stipulated that capital was not an income-producing factor in petitioner's service as a tax policy consultant, and that more than 80 percent of the gross income from his activities in such capacity during 1971 and 1972 was directly attributable to personal services actually rendered, it is, therefore, clear that petitioner's income earned as a tax-policy consultant to the New York State Senate is not subject to unincorporated business tax.

G. That as a result of this determination, the issue concerning the accuracy of the Notice of Deficiency is rendered moot.

H. That the petition of Lloyd E. Slater and Margaret L. Slater is granted, and the Notice of Deficiency dated March 31, 1975 is cancelled.

DATED: Albany, New York

MAY 2 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

I dissent

Francis R. Koenig

COMMISSIONER