

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joel Annis :

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 through 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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Joel Annis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joel Annis
7 Highwood Rd.
East Norwich, NY 11732

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
31st day of July, 1981.

Connie C. Hageland

J. Vredenburg

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

July 31, 1981

Joel Annis
7 Highwood Rd.
East Norwich, NY 11732

Dear Mr. Annis:

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
John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOEL ANNIS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years	:	
1971, 1972, 1973 and 1974.	:	

Petitioner, Joel Annis, 7 Highwood Road, East Norwich, New York 11732, 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, 1972, 1973 and 1974 (File No. 20890).

On March 6, 1981, 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.

ISSUES

Whether petitioner's activities as a technical writer constitute the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Joel Annis, (hereinafter petitioner) timely filed joint New York State income tax resident returns with his wife for the years 1971, 1972, 1973 and 1974, whereon he reported business income from his activities as a technical writer. He did not file unincorporated business tax returns for any of said years at issue.

2. On September 26, 1977 the Audit Division issued a Statement of Audit Changes to petitioner wherein the income derived from his activities as a technical writer was held subject to unincorporated business tax for the years 1971, 1972, 1973 and 1974 based on a prior State Tax Commission decision issued for the years 1968, 1969 and 1970. Accordingly, a Notice of Deficiency was issued against petitioner under the same date asserting unincorporated business tax of \$1,729.73, plus interest of \$439.85, for a total due of \$2,169.58.

3. During the years at issue petitioner prepared technical manuals for the operation, maintenance and installation of electronic, electro-mechanical, hydraulic and pneumatic equipment for the United States armed forces and the Federal Aviation Administration. Additionally, he occasionally taught operation and maintenance training courses for military instructors and technicians.

4. Peittioner's educational background consists of receiving an A.B. degree in English from New York University - Heights College of Arts and Science in 1949, and a masters degree in English from New York University - Graduate School of Arts and Science in 1951. Although petitioner does not hold a degree in a field of science, he has received some training in electronics through the military, and has completed several complicated engineering courses.

5. Petitioner conducted his business activities under the name of Highwood Technical Services. Capital was not a material income producing factor and more than 80 percent of petitioner's gross income for the taxable years at issue was derived from personal services rendered.

CONCLUSION OF LAW

A. That 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.

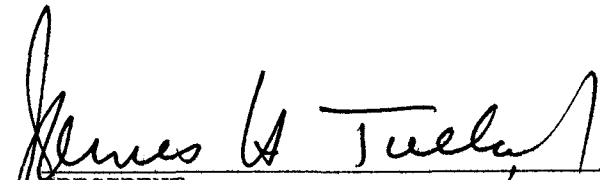
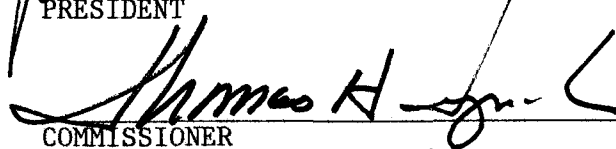

Although petitioner's activities as a technical writer required special knowledge and skills, the application and nature of these attributes did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of petitioner, Joel Annis, during the years 1971, 1972, 1973 and 1974 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Accordingly, the income derived therefrom is subject to the imposition of unincorporated business tax pursuant to section 701 of the Tax Law.

C. That the petition of Joel Annis is denied and the Notice of Deficiency dated September 26, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUL 31 1981


PRESIDENT

COMMISSIONER

COMMISSIONER