

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George Zann, Paul Zaitchick & Eva Zaitchick :
d/b/a Federal Tax Service Co. :
: 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 30th day of October, 1981, he served the within notice of Decision by certified mail upon George Zann, Paul Zaitchick & Eva Zaitchick, d/b/a Federal Tax Service Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Zann, Paul Zaitchick & Eva Zaitchick
d/b/a Federal Tax Service Co.
145 E. 45th St.
New York, NY 10017

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
30th day of October, 1981.

Annie A. Hegeland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George Zann, Paul Zaitchick & Eva Zaitchick :
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: AFFIDAVIT OF MAILING
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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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Morris Turetzsky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris Turetzsky
RD #3, Box 249
Monticello, NY 12701

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
30th day of October, 1981.

Annex A. Hyatt

J. Vredenburg

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

October 30, 1981

George Zann, Paul Zaitchick & Eva Zaitchick
d/b/a Federal Tax Service Co.
145 E. 45th St.
New York, NY 10017

Gentlemen:

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
Morris Turetzsky
RD #3, Box 249
Monticello, NY 12701
Taxing Bureau's Representative

STATE TAX COMMISSION

1. Petitioners, George Zann, Paul Zaitchick and Eva Zaitchick, are co-partners in Federal Tax Service Company, a New York partnership. The partnership filed New York State partnership returns for 1971 and 1972; but did

not file unincorporated business tax returns for subject years on the income it derived from the preparation of tax returns.

2. On March 27, 1978, the Audit Division issued a Notice of Deficiency against petitioner, Federal Tax Service Company, assessing unincorporated business tax of \$2,392.86, plus interest of \$872.89, for a total of \$3,265.75. The Notice of Deficiency was based on a Statement of Audit Changes, issued under same date, which held that information petitioner submitted to the Audit Division failed to establish that it is exempt from unincorporated business tax.

3. Petitioners' prepare multistate and federal income tax returns for a diversified clientele. Petitioner George Zann graduated from New York University where he received a B.C.S. degree with a major in accounting in 1934. He also took additional graduate courses in education and accounting. He worked for approximately four years with independent accounting firms, where he performed auditing and accounting services. He also worked for New York State as an accountant. He testified that he has had a tax practice since graduating from New York University and he has operated Federal Tax Service Company for twenty six years.

Petitioner Paul Zaitchick son of petitioner George Zann has been associated with Federal Tax Service Company for twenty years. He was trained by his father in tax preparation work. He is a high school graduate; he also attended Pace College where he earned approximately fifteen credits in accounting.

Petitioner Eva Zaitchick is a housewife. No evidence had been submitted as to her educational background or the duties that she performed for the partnership.

4. Petitioners George Zann and Paul Zaitchick are enrolled to practice at the administrative level before the Internal Revenue Service, and, are bound by

professional ethics and regulations in such practice. Persons so enrolled are also permitted to act as representatives of taxpayers at all stages of proceedings before the Commission [State Tax Commission, Rules of Practice and Procedure, 601.2(c)(5)].

5. Petitioners George Zann, Paul Zaitchick and Eva Zaitchick are not enrolled as Public Accountants, nor are they Certified Public Accountants.

CONCLUSIONS OF LAW

A. That the activities of petitioners, George Zann, Paul Zaitchick and Eva Zaitchick d/b/a Federal Tax Service Company, for subject years, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703, subdivision (c) of the Tax Law. There is no indication in the record that the preparation of tax returns is controlled by standards of conduct, ethics, malpractice liability or long-term educational background generally associated with a degree in an advanced field of learning. (Matter of Rosenbloom v. State Tax Commission, 44 A.D.2d 69).


B. That the petition of George Zann, Paul Zaitchick and Eva Zaitchick d/b/a Federal Tax Service Company is denied and the Notice of Deficiency issued March 27, 1978 is sustained, together with such interest as may be legally due.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER