

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Howard F. Jackson :

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 1969 - 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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon Howard F. Jackson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard F. Jackson
54 Kilburn Ave.
Garden City, NY 11530

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
23rd day of January, 1981.

Annex A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Howard F. Jackson :

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for Redetermination of a Deficiency or a Revision :
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Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1969 - 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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon Morris A. Kaplan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Morris A. Kaplan
6 Red Deer Lane
Huntington, NY 11743

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
23rd day of January, 1981.

Connie P. Hagelund

J. Vredenburg

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

January 23, 1981

Howard F. Jackson
54 Kilburn Ave.
Garden City, NY 11530

Dear Mr. Jackson:

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 A. Kaplan
6 Red Deer Lane
Huntington, NY 11743
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HOWARD F. JACKSON : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1969, :
1970, 1971, 1972 and 1973. :
:

Petitioner, Howard F. Jackson, 54 Kilburn Avenue, Garden City, New York 11530, 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 1969, 1970, 1971, 1972 and 1973 (File Nos. 15564 and 19446).

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 May 15, 1980 at 2:45 P.M. Petitioner appeared by Morris A. Kaplan, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether the activities engaged in by petitioner as a real estate appraiser constituted the practice of a profession of which the income derived therefrom is exempt from the imposition of unincorporated business tax.

II. Whether petitioner is subject to penalties 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 tax determined to be due, respectively.

FINDINGS OF FACT

1. Petitioner, Howard F. Jackson, filed New York State combined income tax returns with his wife, Veronica Jackson, for the years 1969, 1971, 1972

and 1973. For taxable year 1970 he filed a joint New York State Income Tax Resident Return with his wife. For all years at issue petitioner reported business income derived from his activities as a real estate appraiser. Petitioner did not file an unincorporated business tax return for any of said years at issue.

2. In November 1975 the Audit Division issued a Statement of Audit Changes to petitioner wherein the income from his activities as a real estate appraiser was held subject to the imposition of unincorporated business tax for the years 1969 through 1972 inclusive. Accordingly, a Notice of Deficiency was issued on May 24, 1976 against petitioner asserting unincorporated business tax of \$5,558.84, penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of \$2,269.93 and interest of \$1,441.49, for a total due of \$9,270.26.

3. On November 24, 1976 the Audit Division, issued a Statement of Audit Changes to petitioner wherein his income derived from his real estate appraiser activities was held subject to the unincorporated business tax for taxable year 1973. Accordingly, a Notice of Deficiency was issued on June 27, 1977 against petitioner asserting unincorporated business tax of \$2,557.36, penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of \$1,348.71, and interest of \$613.77, for a total due of \$4,519.84.

4. Petitioner contended that his activities during the years at issue constituted the practice of a profession exempt from the imposition of unincorporated business tax pursuant to section 703(c) of the Tax Law.

5. During the years at issue petitioner, d/b/a Howard F. Jackson Associates, prepared real estate appraisals of businesses predominatly for lending institutions. Additionally he represented municipalities and governmental organizations in an advisory capacity for condemnation awards and feasibility

studies. On many occasions he has appeared in courts of law as an expert witness in the field of real estate appraisal. Petitioner's appraisals were usually submitted in voluminous reports which contained supporting schedules and photographs which were taken by him and his staff.

6. Petitioner is a graduate of Hargrave Military Academy, Chatham, Virginia. He has completed courses in real estate appraising, land use, economics, finance and banking, building construction and supervision at Harvard College, Syracuse University, Columbia University, Hofstra University, Dowling College, the American Institute of Banking, The Institute of Design and Construction , and The American Savings and Loan League. Petitioner did not submit information to show whether, and if so, in what area, he actually holds a degree.

7. Petitioner, who has been engaged in the appraisal of real property for more than thirty years, was a member of several trade organizations including the American Institute of Real Estate Appraisers and The Society of Real Estate Appraisers.

8. Capital was not a material income producing factor in petitioner's real estate appraisal business.

9. Petitioner's staff consisted of his two sons who worked part-time photographing various sites and his wife, who performed secretarial services. Additionally, for the years 1972 and 1973 petitioner hired an assistant. However, petitioner did not introduce evidence to show the nature of his assistants duties and responsibilities.

10. A license is not required to practice as a real estate appraiser in New York State.

11. Petitioners personal income tax returns for the years at issue were prepared by Peter Paternostro, CPA. Mr. Paternostro, who appeared, at the hearing, testified that he had advised petitioner during the years at issue that the income derived from his activities was not subject to the unincorporated business tax.

CONCLUSIONS OF LAW

A. That although petitioners activities required a degree of skill which was attained through study and experience, said activities did not result from a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study. Accordingly, the activities engaged in by petitioner as a real estate appraiser did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the income derived from petitioner's real estate appraiser activities is subject to the imposition of unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

C. That the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2), for all years at issue are hereby abated since petitioner has satisfactorily established that the returns at issue were not filed, and the tax not paid due to reasonable cause rather than willfull neglect

D. That the petition of Howard F. Jackson is granted to the extent provided in Conclusion of Law "C" supra and that said petition is in all other respects denied.

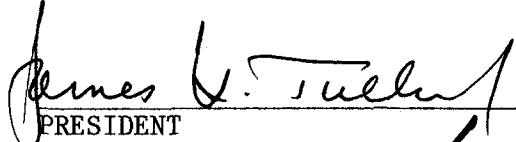
E. That the Audit Division is hereby directed to modify the Notice of Deficiency for the years 1969, 1970, 1971 and 1972 dated May 24, 1976, and the

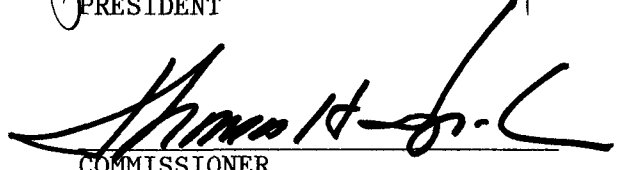
Notice of Deficiency for the year 1973 dated June 27, 1977, to be consistent with the decision rendered herein.

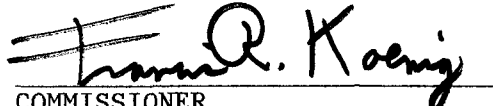
DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER