

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Alfred E. & Mary S. Kahn :

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 1970 - 1972. :

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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Alfred E. & Mary S. Kahn, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred E. & Mary S. Kahn
910 Independence Ave., S.E.
Washington, DC 20003

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
9th day of January, 1981.

Connie A. Hagelund

J. Vredenburg

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

January 9, 1981

Alfred E. & Mary S. Kahn
910 Independence Ave., S.E.
Washington, DC 20003

Dear Mr. & Mrs. Kahn:

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	:	
ALFRED E. KAHN and MARY S. KAHN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1970,	:	
1971 and 1972.	:	

Petitioners, Alfred E. Kahn and Mary S. Kahn, 910 Independence Avenue, S.E., Washington, D.C. 20003, 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 1970, 1971 and 1972 (File No. 12146).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 2, 1979 at 1:15 p.m. Petitioner Alfred E. Kahn appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (S. Freund, Esq., of counsel).

ISSUE

Whether income from petitioners' activities as an economic consultant is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Alfred E. Kahn and Mary S. Kahn, filed New York State combined income tax resident returns for the years 1970, 1971 and 1972, on which business income was reported by petitioner Alfred E. Kahn.

2. On November 24, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, imposing tax due of \$1,154.43, plus interest, for 1970, 1971 and 1972, along with an explanatory Statement of Audit Changes on

which income derived from economic consulting services was held subject to unincorporated business tax.

3. Petitioner Alfred E. Kahn was a professor of economics and dean of the College of Arts and Sciences at Cornell University when he accepted an appointment (in August, 1968) to the Council of Economic Advisors ("The Council") of American Telephone and Telegraph Corporation ("A T & T" or "Bell"). As a member of the Council, petitioner's activities during the years 1970, 1971 and 1972 consisted of:

- (a) meeting "six to eight times a year with A T & T executives and staff specialists, in seminars, to discuss economic issues and policies of importance to the Bell System".

- (b) being "available to give talks to Bell executives on policy issues in communications".

- (c) serving "on A T & T's Academic Review Board, reviewing applications by academicians for fellowships to do academic research in public utility economics, selecting recipients of awards, and later evaluating and criticizing their research products".

- (d) supplying "written comments from time to time on specific articles, research reports, memoranda, testimony of Bell System people".

4. Petitioner Alfred E. Kahn also rendered services for National Economic Research Associates ("NERA") during 1971 and 1972. NERA is an economic consulting firm specializing in economic regulation. Petitioner's activities consisted of conducting seminars and talks for the principal officers, staff members and clients of NERA.

5. Petitioner Alfred E. Kahn received compensation during 1972 for reading a manuscript for the Board of Editors of the Bell Journal of Economics, and advising them of its quality.

6. Petitioner Alfred E. Kahn rendered sworn testimony that his activities for A T & T consisted of advice on the conduct of business itself, which included pricing and policy matters for utility services.

7. Petitioner Alfred E. Kahn is a renowned economist, who has written four books, numerous articles and research reports and has taught and lectured on various areas of economics. He has been an advisor and consultant to various government agencies, including the executive branch of the United States Government.

8. Petitioner Alfred E. Kahn has both bachelor and masters degrees from New York University, has conducted graduate study at the University of Missouri and earned a Ph.D. from Yale University. In addition, petitioner has been the recipient of a variety of honors and awards from various institutions.

9. Petitioner Alfred E. Kahn contended that the consulting services rendered for A T & T and NERA constituted the practice of a profession as an economist and argued that the income derived therefrom should be exempt from unincorporated business tax.

10. Capital was not a material income producing factor and all income at issue was derived from personal services rendered by petitioner Alfred E. Kahn.

11. Petitioner Mary S. Kahn was listed as a "housewife" on the combined New York State personal income tax resident returns filed for the years 1970, 1971 and 1972, and all business income at issue was attributed to petitioner Alfred E. Kahn.

CONCLUSIONS OF LAW

A. That petitioner's consulting services during the years 1970, 1971 and 1972 dealt with the conduct of business itself and did not constitute the practice of a profession in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That petitioner's consulting services during the years 1970, 1971 and 1972, constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law and the income derived therefrom is subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That the petition of Alfred E. Kahn and Mary S. Kahn is granted to the extent that the name of Mary S. Kahn is to be eliminated from the Notice of Deficiency issued November 24, 1975.

D. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued November 24, 1975; and that, except as so granted, the petition is in all other respects denied.

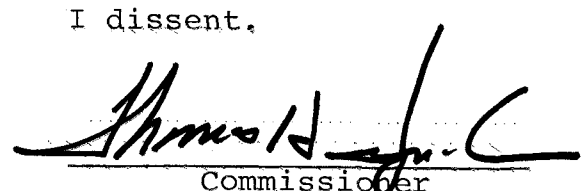
DATED: Albany, New York

JAN 09 1981

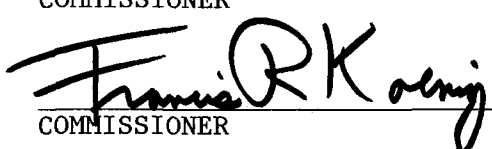
STATE TAX COMMISSION


PRESIDENT

I dissent.


Commissioner

COMMISSIONER


COMMISSIONER