

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Gerhard Levy

:

:

: 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 1974 & 1975.

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 October, 1981, he served the within notice of Decision by certified mail upon Gerhard Levy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerhard Levy
139 Surrey Run Ln.
Buffalo, NY 14221

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 October, 1981.

Ann A. Haglund

J. Vredenburg

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

October 2, 1981

Gerhard Levy
139 Surrey Run Ln.
Buffalo, NY 14221

Dear Mr. Levy:

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,
Kathy Pfaffenbach

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	:	
GERHARD LEVY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1974	:	
and 1975.	:	

Petitioner, Gerhard Levy, 139 Surrey Run Lane, Buffalo, New York 14221, 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 1974 and 1975 (File No. 22482).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on January 29, 1981 at 10:45 A.M. Petitioner Gerhard Levy appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner's activities as a consultant in pharmacology constitute the practice of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Gerhard Levy, and Rosalyn Levy, his wife, filed New York State combined income tax returns for 1974 and 1975. Petitioner Gerhard Levy filed unincorporated business tax returns for the years at issue. Petitioner reported income received as a consultant, but also stated on the unincorporated

business tax returns that the income was from professional services and therefore exempt from unincorporated business tax.

2. On April 10, 1978, the Audit Division issued a Notice of Deficiency and explanatory Statement of Audit Changes against petitioner for 1974 and 1975 imposing unincorporated business tax plus interest, less an overpayment of \$37.00 on the petitioner's personal income tax return for 1975. The Notice was issued on the grounds that the income derived from the petitioner's services as a consultant is considered to be business income subject to New York State unincorporated business tax.

3. Petitioner, Gerhard Levy, received a degree in pharmacy from the University of California in 1955 and a Doctorate of Pharmacy in 1958 from the same university.

The petitioner then took positions with the State University of Buffalo as follows:

Assistant Professor of Pharmacy, University of Buffalo	1958-1960
Acting Chairman, Dept. of Pharmacy, University of Buffalo	1959-1961
Associate Professor of Pharmacy, State Univ. of N.Y. at Buffalo	1960-1964
Professor of Biopharmaceutics, State Univ. of N.Y. at Buffalo	1964-1972
Chairman, Dept. of Pharmaceutics, State Univ. of N.Y. at Buffalo	1966-1970
Distinguished Professor of Pharmaceutics, State Univ. of N.Y. at Buffalo	1972
Director, Clinical Pharmacokinetics Research Center, State Univ. of N.Y. at Buffalo	1979

The petitioner was also appointed to the following positions while working at the University of Buffalo:

Visiting Scientist, A.A.C.P.	1963-1970
Consultant, World Health Organization	1966
Visiting Professor, Hebrew University, Jerusalem	1966-
Member of the Editorial Board:	
International Journal of Clinical Pharmacology	1968-1978
Clinical Pharmacology & Therapeutics	1969-
Journal of Pharmaceutical Sciences	1970-1975
Perspectives of Biochemical Pharmacology	1972
Drug Metabolism and Disposition	1972-1978

International Journal of Pharmaceutics	1977
Pharmacy International	1980-
Pediatric Pharmacology	1980-
Consultant, Bureau of Drugs Advisory Panel System, Food and Drug Administration	1971-1973
Member, Committee on Problems of Drug Safety, Drug Research Board, National Research Council	1971-1975
Member, Pharmacology-Toxicology Program Committee, National Institute of General Medical Sciences, NIH	1971-1975
Visiting Professor of Pharmacology and Toxicology, Univ. of Rochester, School of Medicine & Dentistry	1972
Consulting Editor, J. Pharmacokin. & Biopharm.	1972-
Member, Executive Committee, Division of Clinical Pharmacology, Am. Soc. Pharmacol. Exp. Therap.	1972-1978
Graduate Professor, External Graduate Faculty, Victorian College of Pharmacy, Melbourne, Australia	1973
Member, The Medical Letter Advisory Board	1973-
Member, Scientific Group on Bioavailability of Drugs, World Health Organization	1973
Member, Clinical Research Center Advisory Committee, Buffalo Children's Hospital	1975-1977
Member, Council on Clinical Pharmacology	1980-
Member, Organizing Committee, 1983 World Conference on Clinical Pharmacology & Therapeutics	1980-

4. The petitioner is a member of the following professional societies:

American Pharmaceutical Association
 Academy of Pharmaceutical Sciences (senior member, section of pharmacology and biochemistry)
 American Chemical Society
 American Society for the Advancement of Science (fellow)
 American Society for Pharmacology and Experimental Therapeutics
 Society for Experimental Biology and Medicine
 Perinatal Research Society

He has received over the years the following honors and awards:

American Pharmaceutical Foundation Research Achievement Award in Physical Pharmacy, 1969
 Ebert Prize (best research paper in J. Pharm. Sci.) 1969
 Medal of the Italian Society of Pharmaceutical Science, 1969
 Rector's Medal, University of Helsinki, Finland, 1969
 Alumnus of the Year 1970, University of California, School of Pharmacy Alumni Association
 Fellow of the A.Ph.A. Academy of Pharmaceutical Sciences (elected 1971)
 Distinguished Professor Pharmaceutics, State Univ. of N.Y. Buffalo, 1972
 Distinguished Lecturer in Pharmaceutical Sciences, American Association for the Advancement of Sciences National Meeting, 1972
 Doctor honoris causa, Uppsala University, Sweden, 1975
 National Rho Chi Lecturer Award, 1977

McKeen Cattell Distinguished Achievement Award in Clinical Pharmacology of the American College of Clinical Pharmacology, 1978
Host Madsen Medal (for research in the pharmaceutical sciences) of the International Pharmaceutical Federation, 1978
Roland T. Lakey Award (for accomplishments in clinical pharmacokinetics) of Alpha Chi Chapter of Rho Chi, Wayne State University, 1979
Doctor (D.Sc.) honoris causa, Philadelphia College of Pharmacy and Science, 1979
Troy C. Daniels Lecturer, Sch. of Pharmacy, Univ. of California at San Francisco, 1979
Elected Member, Institute of Medicine of the National Academy of Sciences, 1980

Petitioner is listed in Who's Who in American Education, Who's Who in American Men of Science. He has authored approximately 400 technical papers and publications and is cited in The 300 Most Cited Authors, 1961-1976, this was based on a survey of the world literature in the biomedical sciences, chemistry and physics.

5. During the years at issue the petitioner worked part-time as an independent scientific adviser for pharmaceutical companies, the Federal government and universities providing personal services in the areas of pharmaceuticals, pharmacokinetics and pharmacology. He designs, interprets and reviews research studies, scientific developments and scientific reports in his areas of expertise. The activities of petitioner were not in the nature of selling a product or service nor did petitioner undertake to advise management as to management business or industrial affairs.

CONCLUSIONS OF LAW

A. That 20 NYCRR 203.11(b)(1)(i) provides:

"...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..."

It is evident from petitioner's educational background and the nature of services which he rendered that his activities were of a professional nature.

B. That petitioner's services rendered to agencies of the Federal government, pharmaceutical companies and universities were not services dealing with the conduct of business itself. As such, the activities of petitioner, Gerhard Levy, as a consultant in pharmacology during the years in issue, constituted the practice of a profession; therefore, said practice is not deemed to be an unincorporated business within the intent and meaning of section 703(c) of the Tax Law.

C. That the petition of Gerhard Levy is granted and the Notice of Deficiency issued April 10, 1978 is hereby cancelled. The Audit Division is hereby directed to authorize a refund to petitioner and his spouse for \$37.00, together with such interest as may be lawfully owing.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION

James G. Tuella

PRESIDENT

Frank R. Kalin

COMMISSIONER

Mark J. [Signature]

COMMISSIONER