

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Parkmed Associates and Parkmed Company : 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 1973 - 1975. :

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State of New York  
County of Albany

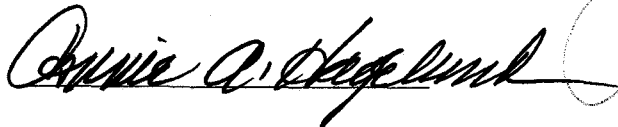
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of November, 1981, he served the within notice of Decision by certified mail upon Parkmed Associates and Parkmed Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

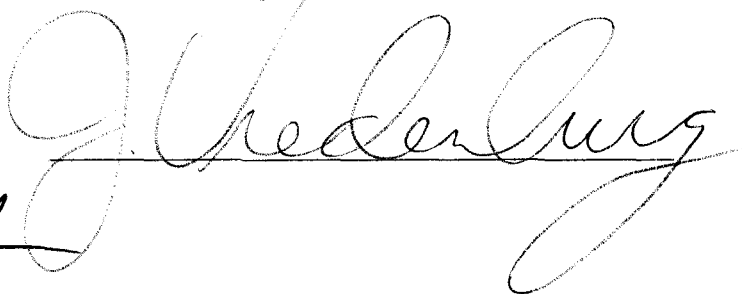
Parkmed Associates and Parkmed Company  
475 Park Ave. So.  
New York, NY 10016

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  
27th day of November, 1981.





STATE OF NEW YORK  
STATE TAX COMMISSION

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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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Richard A. Kerner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard A. Kerner  
30 Vesey St.  
New York, NY 10007

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  
27th day of November, 1981.

*Carmie A. Hyland*

*J. Vredenburg*

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

November 27, 1981

Parkmed Associates and Parkmed Company  
475 Park Ave. So.  
New York, NY 10016

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  
Richard A. Kerner  
30 Vesey St.  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
PARKMED ASSOCIATES and PARKMED COMPANY  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Years 1973  
through 1975.

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DECISION

Petitioners, Parkmed Associates and Parkmed Company, 475 Park Avenue South, New York, New York 10016, 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 1973 through 1975 (File No. 22926).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 17, 1979 at 1:15 P.M. Petitioners appeared by Richard A. Kerner, Esq. The Audit Division appeared by Peter J. Crotty, Esq. (J. Ellen Purcell, Esq. and Irving Atkins, Esq., of counsel).

ISSUES

I. Whether petitioner, an abortion clinic, qualifies for a professional exemption from unincorporated business tax.

II. Whether medical services performed by non-partner independent contractors are attributable to member partners for purposes of meeting the requirement set forth in Tax Law section 703(c) that 80% of partnership income be derived from personal services of the member partners.

FINDINGS OF FACT

1. Petitioners, Parkmed Associates and Parkmed Company, filed New York State partnership returns for the years 1973 through 1975. However, they did not complete Schedule U-D pertaining to unincorporated business tax but did write in the words "not applicable".

2. On February 28, 1977, petitioners signed a consent fixing period of limitation upon assessment of personal income and unincorporated business tax on or before April 15, 1978.

3. On June 22, 1977, the Audit Division issued a Statement of Audit Changes against petitioners for the years 1973 through 1975 for unincorporated business tax. Accordingly, the Audit Division issued a Notice of Deficiency for the years 1973 through 1975 against petitioners on April 12, 1978, asserting unincorporated business tax of \$78,077.07 plus interest of \$19,237.56, for a total due of \$97,314.63.

4. Petitioners timely filed a petition for redetermination of a deficiency or for refund of unincorporated business tax for the years 1973 through 1975.

5. Petitioners owned and operated an abortion clinic in New York City. Parkmed Associates is a limited partnership and Parkmed Company is a general partnership. According to the partnership agreement, there are three general partners in each: two doctors and one accountant. One of the general partners, Dr. Milton Danon, devotes 100% of his time to the clinic. Each of the other two general partners, Dr. Saul Drubin and Mr. Gregory Cinnella, devotes approximately 5% of his time to the business. Each of the three general partners is also a limited partner in Parkmed Associates.

6. Dr. Milton Danon, a medical doctor and Executive Director of the clinic was, during the period involved herein, a full-time partner responsible

for overall supervision. As such, he set the rules and regulations governing patient care. He and his deputy performed less than 20 percent of the abortions and trained other doctors who performed abortions at the clinic. The Deputy Medical Director, also a medical doctor, was also a full-time employee.

7. Petitioners retained seven medical doctors to perform abortions. These doctors, who performed most of the abortions and other related activities, were engaged as independent contractors, and paid a weekly amount arrived at by multiplying the number of abortions performed each week by a fixed fee per abortion. During the years at issue the clinic charged \$150.00 per abortion, \$30.00 of which was remitted without any deductions to the operating physician.

8. Dr. Milton Danon and his deputy supervised the independent contractors (medical doctors) in only a very general way. They did not usually see the patients who were operated on by the independent contractors unless an emergency arose.

9. The other general partners were not involved in patient care for any appreciable amount of time. Dr. Drubin, a medical doctor, devoted 5 percent of his time to the clinic. Mr. Cinnella, an accountant, also devoted approximately 5 percent of his time to the business. They both received profits as limited partners in Parkmed Associates.

#### CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law defines a profession as the following:

"The practice of law, medicine, dentistry or architecture, and the practice of any other profession in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or the members of the partnership or other entity, shall not be deemed an unincorporated business."

That the 80 percent requirement as to gross income and personal services has been interpreted by 20 NYCRR 203.11(b)(3) as follows:

"In cases where an individual employs assistants to perform part of the professional work, fees or charges relating to the services of the assistants will be attributed to the individual provided he (a) gives his personal attention to the work of the business, (b) consults with clients or patients, (c) devises the work program, outlines work methods and guides and directs the work procedure of the employees in the activity, and (d) supervises the formulation of advice, conclusions and reports to clients or patients as the person responsible for the services performed by the business or establishment; or provided that some combination of the foregoing and/or other activities shows that the services of the employees are merely incidental to the practice of the profession by the individual. Where the profession is carried on by a partnership, income or fees relating to work performed by employees will be attributable to members of the partnership only if, in addition to the conditions enumerated above with respect to individuals, it is shown that clients or patients are advised by some active member of the partnership and look to some active member as being responsible for the services performed...where the nature and character of the service rendered by the assistants is such that the services are rendered without any substantial control by...an active member of the partnership, such services will not be considered attributable to the...partner for the purposes of this paragraph..."

B. That this partnership is also not engaged in the practice of "any other profession...in which more than eighty per centum of the unincorporated business gross income...is derived from personal services actually rendered by the individual or by members of the partnership."

C. That the independent contractors were by definition directed only as to results and not as to the manner of operating on patients, hence not under that degree of supervision which would render the fees for the abortions they performed due to the personal services of any partners. See Hewitt v. Bates, 297 N.Y. 239 (1948); Borak & Borak v. State Tax Commission, 45 A.D.2d 558 (3d Dept. 1974).

D. That the fees generated by the seven independent medical doctors were not fees derived from personal services actually rendered by the members of the

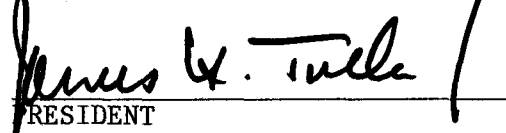
partnership. The seven physicians were hired as independent contractors by petitioners and performed their surgical procedures without the direct supervision and control of Dr. Milton Danon, Executive Director. In addition, they performed most of the abortions at the aforesaid abortion clinic and thus, their services were not merely incidental to the practice of the profession by an active member of the partnership.

E. That the petition of Parkmed Associates and Parkmed Company is denied and the Notice of Deficiency issued April 12, 1978, is sustained.

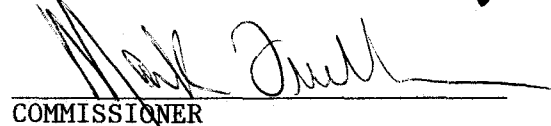
DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION

  
RESIDENT

  
COMMISSIONER

  
COMMISSIONER