

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Carmelo Rizzo

:

:

: 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 - 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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Carmelo Rizzo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carmelo Rizzo
1 Penn Plaza
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
15th day of May, 1981.

James A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carmelo Rizzo :

: 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 - 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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Allan Winston 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. Allan Winston
280 Madison Ave.
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 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
15th day of May, 1981.

James A. Hagelund

J. Vredenburg

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

May 15, 1981

Carmelo Rizzo
1 Penn Plaza
New York, NY 10016

Dear Ms. Rizzo:

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
Allan Winston
280 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CARMELO RIZZO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971, 1972 and 1973.	:	

Petitioner, Carmelo Rizzo, 1 Penn Plaza, New York, New York 10001, 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 1971, 1972 and 1973 (File No. 18764).

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 October 22, 1980 at 1:15 P.M. Petitioner appeared with Allan Winston, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the activities engaged in by petitioner during the years at issue constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Carmelo Rizzo (hereinafter petitioner) filed joint New York State income tax resident returns with his wife for the years 1971, 1972 and 1973 whereon he reported his occupation as "Design", "Bldg. Consult. Design" and "Bldg. Consult." respectively. His business income derived from such occupation was reported on said returns as being from "Design Consultant" activities.

Petitioner did not file an unincorporated business tax return for any of said years at issue.

2. On December 10, 1976, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that the income derived from his activities "as building design consultant is subject to the unincorporated business tax". Accordingly, a Notice of Deficiency was issued against petitioner on March 28, 1977 asserting unincorporated business tax of \$4,076.40, plus interest of \$1,069.99, for a total due of \$5,146.36.

3. In addition to the aforementioned description of petitioner's activities during the years at issue, the record shows petitioner variously described his vocation as follows:

A. Per the petition for redetermination of deficiency -- "Zoning and Building Law Consultant"

B. Per petitioner's business cards used during the years at issue -- "Interior Designer" and,

C. Per petitioner's testimony -- "Industrial Design Consultant".

4. Petitioner's educational background consisted of attendance at Pratt Institute in Brooklyn, New York for a period of six years. Petitioner did not introduce evidence regarding his course of study or the type of degree earned. Additionally, he undertook post graduate studies at the Institute of Design and Construction where he received courses in building codes and zoning laws. Petitioner contended that although he does not hold a license in architecture, his education was geared toward a career in such profession.

5. Subsequent to the completion of his education, petitioner commenced employment with an architectural firm. Such employment lasted for a period of approximately two years. He initially began working in the plumbing design department, but was transferred to the departments of drafting and design, and

ultimately the department of building and zoning law. After termination of such employment, petitioner worked for various small architectural firms performing the functions of drafting layouts and filing necessary documents with the Department of Buildings. In 1968 petitioner started his own business, which at that time offered a drafting type service.

6. During the years at issue, petitioner's activities primarily consisted of drafting drawings for the efficient use of space for commercial tenants in commercial buildings. Such plans were executed with the objective of complying with the applicable building and zoning laws.

7. During the years at issue, petitioner lectured the Building Owners and Managers Association of New York, as well as various other organizations, architectural firms and interior design firms, on different aspects of industrial design and zoning regulations.

8. During the years at issue, petitioner was a member of the American Society of Interior Designers.

9. Petitioner's staff consisted of a secretary, draftsmen, and at various times, architects and engineers. However, no evidence was introduced with respect to the nature of his staff during the years at issue.

CONCLUSIONS OF LAW

A. That within the meaning and intent of section 703(c) of the Tax Law, 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, and in serving their interests or welfare in the practice of an art or science founded on it. That the performing of services dealing with the

conduct of business itself, including the promotion of sales or services of such business and consulting services, does not constitute the practice of a profession even though the services involve the application of a specialized knowledge.

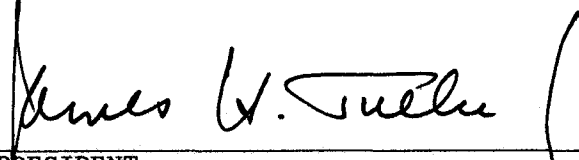
B. That petitioner's activities, although requiring special knowledge and experience, do not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

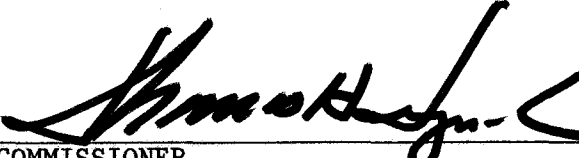
C. That the petition of Carmelo Rizzo is denied and the Notice of Deficiency dated March 28, 1977 is sustained, together with such additional interest as may be lawfully owing.

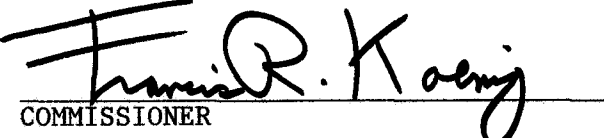
DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER