

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Mac E. Cadaret : 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 - 1974.

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 30th day of April, 1982, he served the within notice of Decision by certified mail upon Mac E. Cadaret, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mac E. Cadaret
119 Wendell Terr.
Syracuse, NY 13203

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
30th day of April, 1982.

Bennie A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Mac E. Cadaret :

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 - 1974

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 30th day of April, 1982, he served the within notice of Decision by certified mail upon Robert Fagliarone the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Fagliarone
Grimaldi, Woods & Fagliarone
627 W. Genesee St.
Syracuse, NY 13204

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
30th day of April, 1982.

Dennis R. Haglund

Jay Vredenburg

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

April 30, 1982

Mac E. Cadaret
119 Wendell Terr.
Syracuse, NY 13203

Dear Mr. Cadaret:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert Fagliarone
Grimaldi, Woods & Fagliarone
627 W. Genesee St.
Syracuse, NY 13204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MAC E. CADARET
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1973
and 1974.

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DECISION

Petitioner, Mac E. Cadaret, 7474 Moonvalley Drive, Liverpool, New York 13088, 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 and 1974 (File No. 19130).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, 333 E. Washington Street, Syracuse, New York, on October 30, 1980 at 9:15 A.M. Petitioner Mac E. Cadaret appeared with Robert Fagliarone, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the activities of petitioner as a salesman of mutual funds constituted the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Mac E. Cadaret, filed joint New York income tax returns with his wife for the years 1973 and 1974. Petitioner reported net income

thereon from his activities as both an insurance salesman and a securities salesman. Petitioner filed unincorporated business tax returns for the years 1973 and 1974 including income only from his activities as an insurance salesman.

2. On March 28, 1977, the Audit Division issued a Statement of Audit Changes and a Notice of Deficiency against petitioner, Mac E. Cadaret, imposing unincorporated business tax of \$911.92 upon the income he derived from his activities as a mutual funds salesman during the years 1973 and 1974.

3. Petitioner sold mutual funds through a broker and received commissions therefrom. No evidence was presented to indicate the extent, if any, of the supervision and control exerted on petitioner's sales activities.

4. Petitioner contended that his activities as a salesman of mutual funds constituted the practice of a profession exempt from the unincorporated business tax. Petitioner argued that his activities constituted the practice of a profession based upon the following factors:

(a) A long-term educational background. Aside from a college degree in economics, petitioner completed various programs in the field of insurance sales and was working toward a certified financial planning degree.

(b) The requirement of a license which indicates sufficient qualifications have been met prior to engaging in the occupation. The National Association of Securities Dealers (NASD), of which petitioner is a registered member, requires the completion of a three-day training program and the passing of an examination in order to obtain a license which allows registration with an NASD member firm.

(c) The control of the occupation by standards of conduct and ethics. The NASD is responsible for all activities of its members. The member firm cannot deal with a non-member firm or non-registered representative.

(d) The barrier to carrying on the occupation as a corporation. A corporation cannot be a registered representative member of NASD.

CONCLUSIONS OF LAW

A. That the word profession implies attainments in professional knowledge as distinguished from mere skill and the application of knowledge to uses for others as a vocation. 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 within the meaning and intent of section 703(c) of the Tax Law even though the services involve the application of a specialized knowledge. This was formally recognized by promulgation of 20 NYCRR 203.11 effective February 1, 1974. That although requiring special knowledge and skill, the activities of petitioner, Mac E. Cadaret, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

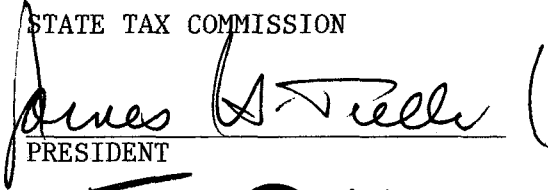
B. That the activities of petitioner as a salesman of mutual funds during the years 1973 and 1974 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law, and the income derived therefrom was subject to unincorporated business tax.


C. That the petition of Mac E. Cadaret is denied and the Notice of Deficiency issued March 28, 1977 is sustained together with such interest as may be lawfully owing.

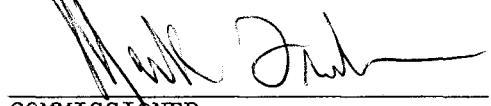
DATED: Albany, New York

APR 30 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER