

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George H. & Helen G. Callaway :

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, 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 18th day of June, 1982, he served the within notice of Decision by certified mail upon George H. & Helen G. Callaway, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George H. & Helen G. Callaway
Orchard Hill
Argyle, NY 12809

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
18th day of June, 1982.

Carrie A. Haglund

Jay Vredenburg

STATE OF NEW YORK

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Business Tax under Article 23 of the Tax Law for :
the Years 1973, 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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Richard V. D'Alessandro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

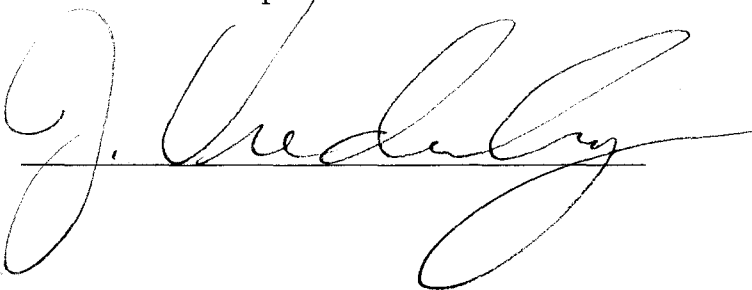
Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210

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
18th day of June, 1982.





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

June 18, 1982

George H. & Helen G. Callaway
Orchard Hill
Argyle, NY 12809

Dear Mr. & Mrs. Callaway:

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
Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE H. CALLAWAY AND HELEN G. CALLAWAY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1973,	:	
1974 and 1975.	:	

Petitioners George H. Callaway and Helen G. Callaway, Orchard Hill, Argyle, New York 12809, 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, 1974 and 1975. (File No. 25013).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on May 15, 1981 at 10:00 A.M. George H. Callaway appeared with Richard V. D'Alessandro, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioner George H. Callaway's activities as an arborist for the years 1973, 1974 and 1975 constituted the practice of a profession and the income therefrom was thus exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, George H. Callaway and Helen G. Callaway, did not file unincorporated business tax returns for the years 1973 through 1975.
2. The Audit Division issued a Statement of Audit Changes against petitioner George H. Callaway on which the Division contended that his activities as a

consultant constituted the carrying on of an unincorporated business and the income derived therefrom was subject to the unincorporated business tax. Accordingly, on November 28, 1978, the Audit Division issued a Notice of Deficiency against the petitioners for the years 1973 through 1975 imposing unincorporated business tax of \$2,252.51, plus \$661.47 in interest, for a total due of \$2,913.98.

3. Petitioner George H. Callaway contended that he was engaged in the practice of a profession, and thereby exempt from the imposition of unincorporated business tax.

4. Petitioner George H. Callaway graduated with Bachelor of Arts degree from Cornell University in 1941. He has been engaged in arboriculture since that time. As an arborist petitioner understands the processes and reactions that take place in the normal life and growth of a tree. He has knowledge about plant diseases and insects which infect trees and the control measures such as fungicides and insecticides. Petitioner knows the use of fertilizers in feeding trees and the proper methods of pruning, bracing and cavity treatment.

5. During the years at issue, petitioner George H. Callaway provided arboreal services for approximately two hundred clients. Petitioner was particularly concerned with and specialized in the diagnosis and treatment of Dutch Elm disease. Petitioner worked mainly with shade trees. He would examine the tree, make a diagnosis of the problem and give his clients a written recommendation on procedures to control the problem. He would also at times carry out his recommendation for his clients by pruning, injecting and spraying the infected trees.

6. Petitioner is a member of arboriculture societies, including the New York State Arborist Association, the International Society of Arboriculture and

the Elm Research Institute, who all have a standard of conduct and a code of ethics to govern its members. He delivered speeches to various garden clubs, and fraternal organizations.

7. In 1945 petitioner was licensed as an arborist by the State of Connecticut after completing a written examination. There were no preconditions to taking the examination and the license allowed the person to solicit and contract work to improve the conditions of trees by feeding, fertilizing, pruning, trimming, bracing and protecting such trees from damage by insect or disease. New York State has no licensing requirements.

8. Capital was not a material income producing factor and all income at issue was derived from personal services rendered by petitioner George H. Callaway.

CONCLUSIONS OF LAW

A. That petitioner's arboriculture services during the years 1973, 1974 and 1975 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 arboriculture service during the years 1973, 1974 and 1975, 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.

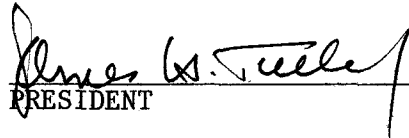
C. That the Audit Division is directed to delete Helen G. Callaway's name from the Notice of Deficiency, since all income at issue was derived from personal services rendered by petitioner George H. Callaway.

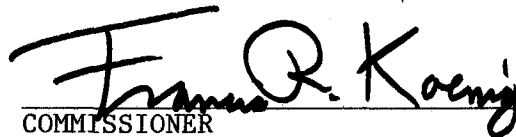
D. That the petition of George H. Callaway and Helen G. Callaway is granted to the extent indicated in Conclusion of Law "C", supra and that, except as so granted, the petition is in all other respects denied.

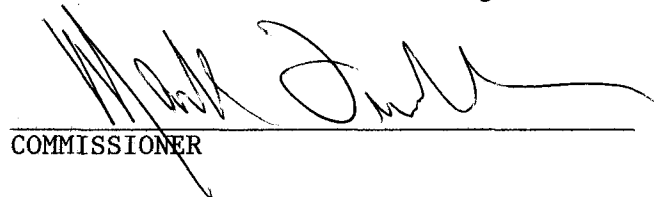
DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER