

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Charles H. Cissley

:

:

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 and 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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Charles H. Cissley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles H. Cissley
687 Lexington Ave. #7B
New York, NY 10022

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 May, 1982.

Ann R. Highland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Charles H. Cissley

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for Redetermination of a Deficiency or a Revision :
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Business Tax under Article 23 of the Tax Law for :
the Years 1973 and 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 27th day of May, 1982, he served the within notice of Decision by certified mail upon William E. Weber the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William E. Weber
Riverview Rd.
Irvington, NY 10523

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 May, 1982.

Cammie P. Haglund

J. Vredenburg

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

May 27, 1982

Charles H. Cissley
687 Lexington Ave. #7B
New York, NY 10022

Dear Mr. Cissley:

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
William E. Weber
Riverview Rd.
Irvington, NY 10523
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHARLES H. CISSLEY	:	DECISION
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.	:	

Petitioner, Charles H. Cissley, 687 Lexington Avenue, #7B, New York, New York 10022, 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. 24120).

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 June 4, 1981 at 2:45 P.M. Petitioner appeared with W.E. Weber, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Sam Freund, Esq., of counsel).

ISSUES

Whether petitioner's activities during the years at issue constituted the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Charles H. Cissley, timely filed New York State income tax resident returns for the years 1973 and 1974 whereon he reported his occupation as "consultant".

2. On July 14, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that the income derived from his activities

as a consultant is subject to the unincorporated business tax. Accordingly, a Notice of Deficiency was issued on February 27, 1978 asserting unincorporated business tax of \$1,556.70, penalties of \$659.52 pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, for failure to file unincorporated business tax returns and failure to pay the tax determined to be due, respectively, plus interest of \$408.34, for a total due of \$2,624.56.

3. Petitioner contended that he erroneously reported his occupation as "consultant". Rather, he argued that his activities during the years at issue were those of an "author and teacher" and as such, constituted the practice of a profession exempt from the imposition of unincorporated business tax.

4. During the years 1973 and 1974 petitioner derived business income from Wiley Learning Systems, Inc. (Wiley) of \$6,000.00 and \$17,870.00 respectively. Also, during said years he derived business income from the Life Office Management Association (LOMA) of \$17,465.66 and \$25,988.81, respectively.

5. During the years at issue petitioner engaged in activities as a lecturer for Wiley. He was given periodic lecturing assignments on a contractual basis. Such lectures were delivered to educational and governmental institutions as well as private sector business groups. The subjects of such lectures were relative to business management. Each lecturing assignment generally comprised a period of three to five days. Lectures given at educational institutions were not part of a degree program. Compensation received was on a flat fee basis.

6. During the years at issue petitioner also engaged in activities as a writer and lecturer for LOMA, a trade association of life insurance companies which is very active in the development of life insurance oriented educational material. In its educational capacity, LOMA conducts the Fellow of Life Management Institute (FLMI) insurance education program. Said program consists

of two courses, which when completed entitles the student to a diploma and FLMI designation. All texts written wholly or partially by petitioner for LOMA during the years at issue were in the nature of "study guides" to be used in conjunction with the FLMI insurance education program.

7. Although petitioner argued that his compensation was derived solely from activities engaged in as either an author or teacher, evidence was submitted indicating receipt of \$637.50 from LOMA during 1973 for services rendered "in editing and reviewing the final draft of the EDP Systems and Applications text".

8. One text, "Life Company Operations", which petitioner claims co-authorship of, lists petitioner under the contributors section as "Consultant".

9. Petitioner was compensated for his writing either on a "submission of work" basis or a per diem basis.

10. Petitioner did not own the copyrights of the material he wrote. Such rights were maintained by LOMA.

11. Lectures given by petitioner on behalf of LOMA were on the subject of data processing systems and were delivered to audiences composed of life insurance company personnel.

12. Petitioner was not licensed by, or registered with any governmental agency as a teacher.

13. Petitioner did not furnish a breakdown of income derived from his activities as a writer or as a lecturer for LOMA.

14. Although petitioner holds a bachelor's degree, the field of study for which it was earned was not disclosed during the hearing. Additionally, he holds a master's degree in business administration and has earned the insurance industry designation FLMI.

15. Petitioner's previous work background was in the field of data processing.

CONCLUSIONS OF LAW

A. That petitioner's lecturing activities were not in connection with teaching duties, as at a college or university; accordingly, such lecturing activities, as engaged in by petitioner, cannot be considered synonymous with activities one would engage in as a teacher.

B. That petitioner's writing activities more closely resembled those of a technical writer rather than those of an author of creative work, the latter of which carries a professional exemption for unincorporated business tax purposes.

C. That 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.

Although petitioner's activities as a lecturer and writer required special knowledge and skills, the application and nature of these attributes did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

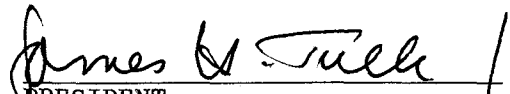
D. That the activities of petitioner, Charles H. Cissley, during the years 1973 and 1974 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Accordingly, the income derived therefrom is subject to the imposition of unincorporated business tax pursuant to section 701 of the Tax Law.

E. That the petition of Charles H. Cissley is denied and the Notice of Deficiency dated February 27, 1978 is sustained together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER