

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Benjamin Levy

:

:

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 Year 1977.

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 21st day of May, 1982, he served the within notice of Decision by certified mail upon Benjamin Levy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Benjamin Levy
44 Highview Ave.
P.O. Box 1058
Liberty, NY 12754

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
21st day of May, 1982.

Gennie P. Haglund

J. Vredenburg

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

May 21, 1982

Benjamin Levy
44 Highview Ave.
P.O. Box 1058
Liberty, NY 12754

Dear Mr. Levy:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BENJAMIN LEVY
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1977.

DECISION

Petitioner, Benjamin Levy, 44 Highview Avenue, P.O. Box 1058, Liberty, New York 12754, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1977 (File No. 29179).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Building #9, Room 107, State Campus, Albany, New York, on September 14, 1981 at 1:15 P.M. Petitioner, Benjamin Levy, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioner's activities as an insurance consultant, public insurance adjuster and management consultant constituted the practice of a profession under subsection (c) of section 703 of the Tax Law, thereby entitling petitioner to an exemption from the imposition of unincorporated business tax on the income derived from said activities.

FINDINGS OF FACT

1. On April 7, 1978, petitioner, Benjamin Levy, filed a New York State Unincorporated Business Tax Return for the year 1977 reporting a net profit of \$33,342.00 from his activities as an insurance consultant, public insurance adjuster and management consultant. The unincorporated business tax shown due

on the return of \$1,192.13 was paid by petitioner with the filing of said return. In a statement attached to the return, petitioner indicated that the unincorporated business tax was being paid under protest, since he believed that he was engaged in the practice of a profession exempt from the imposition of unincorporated business tax.

2. Petitioner filed a claim for refund requesting that the unincorporated business tax of \$1,192.13 be refunded. Said claim was denied in full by the Audit Division via a notice of disallowance dated October 29, 1979.

3. Petitioner conducted his business as a sole proprietorship, doing business under the firm name and style of Insurance Surveys Company. Petitioner's business activities consisted of advising clients as to all aspects of their insurance coverage and representing clients in matters involving settlements of claims with their insurance companies. Mr. Levy was also actively involved in advising management on matters of management's concern. Although a licensed real estate broker, petitioner did not earn any income from the sale or brokerage of real estate. Petitioner's activities did not involve the sale of insurance.

4. In computing net business income of \$33,342.00, petitioner deducted expenses of \$13,764.00, the nature and amount of said expenses categorized as follows:

<u>Expense</u>	<u>Amount</u>
Travel & Entertainment	\$ 830.00
Auto	4,950.00
Telephone & Telegraph	2,218.00
Stationery, Printing & Postage	327.00
Utilities	40.00
Dues & Subscriptions	127.00
Referral Fees	2,741.00
Licenses	128.00
Convention Expenses	369.00
Rent on Business Property	654.00
Legal & Professional Fees	1,380.00
	<u>\$13,764.00</u>

5. Petitioner attended New York University and Brooklyn Law School and is licensed by the State of New York as an Insurance Consultant and by the State of Connecticut as a Certified Insurance Consultant. He is also a member of the Insurance Consultants' Society.

6. More than 80 percent of the business gross income was derived from personal services actually rendered by petitioner and capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner Benjamin Levy, although requiring special skill and knowledge, did not constitute the practice of a profession within the meaning and intent of subsection (c) of section 703 of the Tax Law and 20 NYCRR 203.11(b)(1).

B. That petitioner's activities as an insurance and management consultant and public insurance adjuster during the year 1977 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income derived from said activities is subject to unincorporated business tax.

C. That the petition for refund of Benjamin Levy is denied and the notice of disallowance dated October 29, 1979 is sustained.

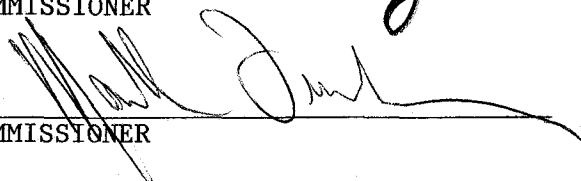
DATED: Albany, New York

MAY 21 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER