

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
David Reichenthal	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Unincorporated	:	
Business Tax under Article 23 of the Tax Law for	:	
the Year 1973.	:	

State of New York
County of Albany

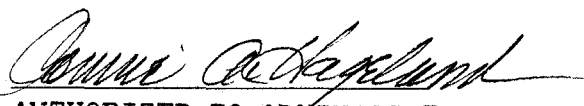
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon David Reichenthal, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Reichenthal
7360 N.W. 1st St.
Margate, FL 33063

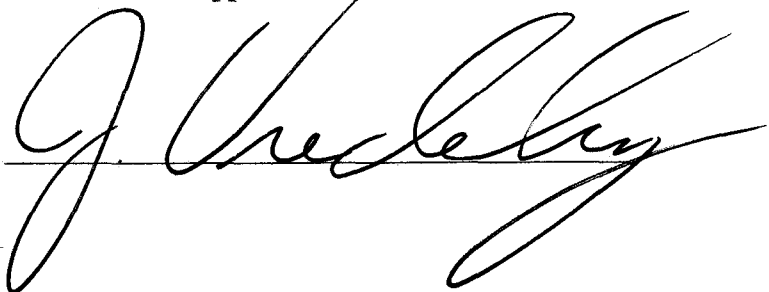
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 14, 1982

David Reichenthal
7360 N.W. 1st St.
Margate, FL 33063

Dear Mr. Reichenthal:

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	:	
DAVID REICHENTHAL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1973.	:	

Petitioner, David Reichenthal, 7360 North West 1st Street, Margate, Florida 33063, 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 1973 (File No. 23016).

On September 22, 1981, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUES

- I. Whether petitioner's activities as a "Public Accountant" constituted the practice of a profession exempt from tax.
- II. Whether petitioner is entitled to deduct expenses and contributions in arriving at taxable business income.

FINDINGS OF FACT

1. Petitioner, David Reichenthal, and his wife Dorothy Reichenthal, timely filed a New York State Income Tax Resident Return for 1973. Petitioner did not file an unincorporated business tax return for said year.
2. Petitioner, in reference to a letter from the Audit Division regarding an audit of his return, indicated that his business income of \$10,915.00 was

derived from Marra Brothers, Inc. and Smith Street Dock Corp., both located at 611 Smith Street, Brooklyn, New York. He described his business activities as "bookkeeping services". He also indicated that Federal Schedule C, "Profit or (Loss) From Business or Profession", did not show any expenses and, as a result, gross income and net income were identical.

3. On May 19, 1977, the Audit Division issued a Statement of Audit Changes against petitioner on the ground that his bookkeeping activities constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax. Said statement proposed unincorporated business tax of \$205.26, penalties, pursuant to section 685(a)(1) and (a)(2) of the Tax Law, of \$97.50 and interest of \$64.61 for a total of \$367.37. Accordingly, on June 26, 1978, a Notice of Deficiency was issued.

4. On May 28, 1977, petitioner submitted a letter in protest to the Statement of Audit Changes in which he stated that unincorporated business tax regulations stipulate "The Unincorporated Business Tax does not apply to --- any profession in which more than 80% of the unincorporated business gross income is derived from the personal services actually rendered by the individual and which capital is not a material income producing factor". He also stated that he did not maintain an office or place of business, did not incur any expenses in the operation of the business, and did not have any capital of any kind. On November 14, 1977, the Audit Division sustained its position by advising petitioner that his protest was denied.

5. On November 29, 1977 the Audit Division received a letter from petitioner in which he stated that he was an accountant, not a bookkeeper, that he attended the College of the City of New York where he studied accounting and related

subjects as a matriculating student from 1928 to 1934, and that his education in addition to his accounting and tax preparation experience gave him the ability to pursue his profession which qualified for exclusion from tax. The Audit Division, after reviewing petitioner's protest, considered the proposed audit changes correct and so notified him by letter dated March 2, 1978.

Petitioner, in subsequent written correspondence, stated that his clients paid him for professional public accounting services which included accounting services, corporate tax preparation, financial statement preparation and analysis, financial advice of accounting, corporate finance, taxes, and investments.

6. Petitioner stated that although he did not possess a license to practice as a public accountant in New York State he did meet the qualifications for a license due to his public accounting background and experience.

7. On March 16, 1981 petitioner failed to appear at a scheduled pre-hearing conference. A Default Order (81-C-16) was issued to petitioner on May 29, 1981. On August 2, 1981, petitioner submitted a letter stating that due to adverse health, financial and other hardships, he was unable to travel to Albany for the pre-hearing conference. In the same letter, he repeated his argument that he was a professional public accountant, did not have to possess a New York license to practice public accounting, and had the necessary qualifications and background to secure a license. On August 24, 1981 petitioner was advised by letter from the Tax Appeals Bureau that since he could not travel to New York he could request, with good reason, that the Default Order be vacated; also, he could request to have his case decided on a submission basis, if the Default Order is vacated. Petitioner made said request and the Default Order was vacated.

8. Petitioner contended that even if his income were taxable there would be no unincorporated business tax due because the Audit Division failed to allow for contributions of \$446.00 and for expenses of \$1,995.00. Petitioner made deductible charitable contributions of \$350.00 during 1973. Petitioner has not submitted any documentary evidence to support his business expenses nor has he shown where said expenses were deducted on his Federal and New York State income tax returns.

CONCLUSIONS OF LAW

A. That in determining what activity constitutes the practice of a profession consideration should be given to the following factors: (1) a long term educational background generally associated with a degree in an advanced field of science or learning; (2) the requirement of a license which indicates sufficient qualifications have been met prior to engaging in the occupation; (3) the control of the occupation by standards of conduct, ethics and malpractice liability; and (4) the barrier to carrying on the occupation as a corporation (see Matter of Rosenbloom v. State Tax Commission, 44 A.D.2d 69 and Joseph Costa v. State Tax Commission, 67 A.D.2d 1074). The record contains no supporting evidence that petitioner David Reichenthal had a long term educational background associated with a degree in accounting or that he had the necessary qualifications and background to obtain a license. Petitioner has not established that his activities were professional in nature. The fact that the petitioner had specialized knowledge in the area of accounting and taxation, by itself, does not establish the practice of a profession. (Matter of Costa, supra) Therefore, petitioner's activities did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law and 20 NYCRR 203.11(b).

B. That petitioner David Reichenthal failed to sustain his burden of proof imposed by sections 722 and 689(e) of the Tax Law in establishing that he paid the expenses referred to in Finding of Fact "8" supra, or that he claimed said expenses on his Federal and New York State income tax returns for 1973.

C. That petitioner is entitled to deduct contributions to the extent of five percent of his net profit from business or the amount of his charitable contributions of \$350.00, whichever is smaller.

D. That the petition of David Reichenthal is granted to the extent shown in Conclusion of Law "C" supra; and that, except as so granted, the petition is denied and the Notice of Deficiency is sustained.

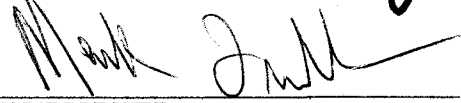
DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER