

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Sheridan :
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 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 5th day of March, 1982, he served the within notice of Decision by certified mail upon William Sheridan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

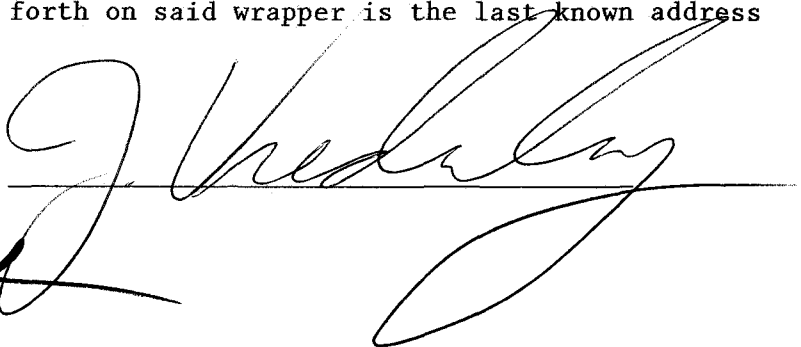
William Sheridan
148 Caldwell Ave.
St. James, NY 11780

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
5th day of March, 1982.


Laurie A. Hayland


Jay Vredenburg

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

March 5, 1982

William Sheridan
148 Caldwell Ave.
St. James, NY 11780

Dear Mr. Sheridan:

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

Petitioner, William Sheridan, 148 Caldwell Avenue, St. James, New York 11780, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1973 (File No. 20583).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 28, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether monies received by petitioner, William Sheridan, are subject to unincorporated business tax for 1973.

FINDINGS OF FACT

1. Petitioner, William Sheridan and his wife, Nancy Sheridan, filed joint New York State income tax resident return (form IT-201) for 1973. Petitioner, William Sheridan did not file an unincorporated business tax return for 1973.

2. On September 26, 1977, the Audit Division issued a Statement of Audit Changes together with a Notice of Deficiency against William Sheridan asserting unincorporated business tax of \$934.67, section 685(a)(1) and (a)(2) penalty of

\$406.58 and interest of \$241.80, for a total of \$1,538.05, based on his reported activity as a consultant for Federal income tax purposes for 1973.

3. Petitioner, William Sheridan, for 1973, was employed by Grumman Aerospace Corporation as a business manager. Petitioner's duties entailed, inter alia, the awarding of subcontracts and orders to subcontractors. Petitioner awarded subcontracts and orders to Burmar Technical Corporation (hereinafter "Burmar"), a subcontractor of petitioner's employer. The awards were made by petitioner to Burmar as a result of an oral agreement between them. The agreement provided that in consideration of petitioner awarding contracts to Burmar, that Burmar was to pay him a percentage of the value of the contracts so obtained. Petitioner in his testimony characterized these payments as "kickbacks". The agreement was found to be illegal, and resulted in petitioner's indictment and conviction by the United States of America.

During his agreement with Burmar Technical Corporation, petitioner formed a sole proprietorship d/b/a Ralton Service Company, which listed its activity as a consultant. Petitioner formed said entity as a vehicle to account for checks received from Burmar Technical Corporation and to pay Federal income tax due thereon.

4. Petitioner was not engaged in the business of a consultant for 1973.

CONCLUSIONS OF LAW

A. That the services for which petitioner, William Sheridan, received monies from Burmar Technical Corporation while in the employ of Grumman Aerospace Corporation for subject year did not constitute the carrying on of an unincorporated business within the meaning and intent of section 703, subdivision (a) of the Tax Law. That the isolated transactions entered into by petitioner giving

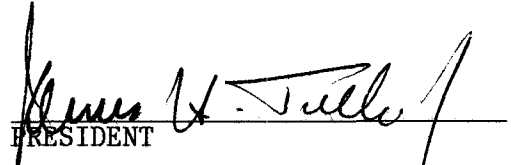
rise to his indictment and conviction did not constitute a trade, business or occupation as these terms are commonly construed.

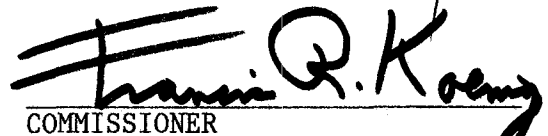
B. That the petition of William Sheridan is granted, and the Notice of Deficiency issued on September 26, 1977 for unincorporated business tax is cancelled.

DATED: Albany, New York

MAR 05 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER