

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Thad L. Weber

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 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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Thad L. Weber, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

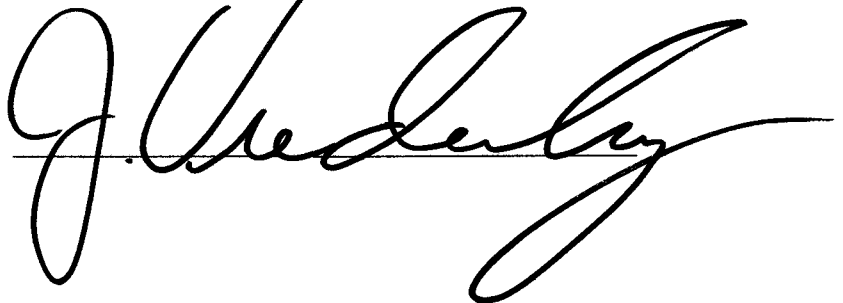
Thad L. Weber
245 E. 40th St.
New York, NY 10016

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
8th day of September, 1982.

Carrie A. Bagelund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

September 8, 1982

Thad L. Weber
245 E. 40th St.
New York, NY 10016

Dear Mr. Weber:

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	:	
THAD L. WEBER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1974.	:	

Petitioner, Thad L. Weber, 245 East 40th Street, New York, New York 10016, 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 1974 (File No. 22319).

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 June 15, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner Thad L. Weber's activities as a crime prevention specialist constitutes the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Thad L. Weber filed separate New York State resident and nonresident income tax returns for 1974. Petitioner, on said returns, listed his occupation as a security consultant; however, he did not file unincorporated business tax returns.

2. On October 7, 1977, the Audit Division issued a Statement of Audit Changes to petitioner which imposed unincorporated business tax on the ground

that petitioner's services as a consultant were subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on March 27, 1978 asserting unincorporated business tax of \$688.32 plus interest of \$172.47 for a total of \$860.79.

3. Petitioner, Thad L. Weber, has been engaged in crime prevention, counselling and teaching for a period in excess of twenty (20) years. Petitioner teaches members of jewelry, drug and insurance associations how to determine the vulnerability of high risk burglary exposure and what to do in terms of applying the correct alarm sensors, signalling devices and supervisory services, together with the development or construction of safes and vaults. These skills are taught to members whose activities are subject to a high risk of burglaries.

Petitioner obtained his knowledge in crime prevention from experience gained over an extended period of time. There are presently no institutions of higher learning which award degrees in petitioner's field of specialty.

4. Approximately two thirds (2/3) of petitioner's income for the subject year was generated from teaching and conducting seminars in crime prevention for associations engaged in high risk activities that are particularly vulnerable to burglaries. His principal clients include the Jewelers' Security Alliance, a nonprofit association, and the National Wholesale Druggist Association, whose membership consists of 400 of the largest distributors of controlled substances.

Petitioner's method of teaching consists, inter alia, of analyzing crimes committed against individual members of the association, and the means available for reducing similar occurrences. Petitioner also authors manuals and booklets relevant to crime prevention which he distributes to members of the association.

5. Petitioner also advises individual enterprises in security protection.

6. Petitioner teaches at seminars conducted by the International Security Conference and The American Society for Industrial Security. These organizations are the principal teaching arm of the security field.

In addition, petitioner teaches crime prevention at seminars conducted by The Bank Administration Institute, American Management Association, State Trade Association and International Narcotics Association. Petitioner has also been consulted by the Federal Reserve System on how they may assure compliance with the Bank Protection Act.

7. Petitioner conducts classes for the Federal Bureau of Investigation and the Drug Enforcement Administration, where he instructs field agents as to the types of crimes they are likely to encounter and the types of evidence which they should seek.

8. Petitioner is also recognized as an expert witness in litigation involving burglary.

9. Prior to subject year, there were no professional societies devoted to the crime prevention or protection field, as this was a newly emerging field. In 1975 or 1976, the American Society for Industrial Security was formed. The first eligibility date for membership was in 1977. The requirements for obtaining a membership as a Certified Protection Professional were either ten (10) years of recognized security experience or less than ten (10) years of experience plus advanced education. Based on petitioner's background, he was enrolled as a Certified Protection Professional.

The society has a code of ethics that provides, inter alia, that failure to comply with its code results in dismissal from the society.

Petitioner is also a member of The Burglary Protection Council of the Underwriters Laboratories. This is one of several engineering councils which Underwriters Laboratories established, whose function is to comment and criticize on the standards of crime prevention developed by Underwriters Laboratories. Its members include the International Association of Chiefs of Police and many other professional groups and individuals who are recognized experts in the field of crime prevention.

10. Petitioner has authored a book on pharmacy security commissioned by the New York State Board of Pharmacy. Petitioner has also authored a book on crime prevention used as part of the curriculum in most major schools of criminology. In addition, petitioner has participated with the Small Business Administration in the preparation of reports on crime against small business.

11. Capital is not a material income producing factor in petitioner's activities.

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; and (3) the control of the occupation by standards of conduct, ethics and malpractice liability. (See Matter of Rosenbloom v State Tax Commission, 44 A.D.2d 69.) Although petitioner has met part of the criteria in (3) he did not meet the criteria in (1) and (2) above. Therefore, petitioner's activities as a crime prevention specialist did not constitute the practice of a profession.

B. That although petitioner's activities as a crime prevention specialist required special knowledge and skills, the performing of services dealing with

the conduct of business itself, including the promotion of sales or services of such business and consulting services, does 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.

C. That the petition of Thad L. Weber is denied and the Notice of Deficiency issued on March 27, 1978, is sustained.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER