

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Julian L. Hayes

:

:

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 1974 & 1975. :

State of New York
County of Albany

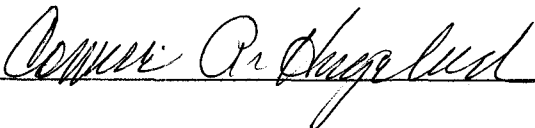
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Julian L. Hayes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Julian L. Hayes
340 Riverside Dr.
New York, NY 10025

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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Julian L. Hayes :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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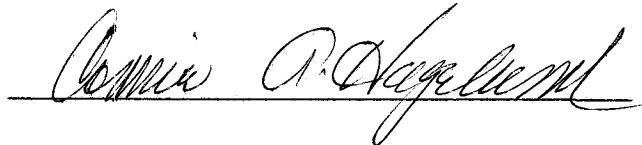
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Melvin M. Steier the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Melvin M. Steier
Northside Plaza, Route 45
Pomona, NY 10970

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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

Julian L. Hayes
340 Riverside Dr.
New York, NY 10025

Dear Mr. Hayes:

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) 690 & 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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Melvin M. Steier
Northside Plaza, Route 45
Pomona, NY 10970
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JULIAN L. HAYES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1974	:	
and 1975.	:	

Petitioner, Julian L. Hayes, 340 Riverside Drive, New York, New York 10025, 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 1974 and 1975 (File No. 31615).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1982 at 10:45 A.M., with all briefs to be submitted by November 18, 1982. Petitioner appeared by Melvin M. Steier, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner's activities as a consultant to the Council of the Americas constituted the practice of a profession, thereby exempting the income earned from said activities from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner herein, Julian L. Hayes, timely filed New York State resident income tax returns for the years 1974 and 1975 wherein he reported business income of \$19,642.00 and \$21,088.00, respectively. The occupation listed on said returns was that of "public relations consultant". Petitioner did not file unincorporated business tax returns for the years 1974 and 1975.

2. On August 31, 1978, the Audit Division issued a Statement of Audit Changes to petitioner for the years 1974 and 1975, asserting that unincorporated business tax of \$1,242.12 was due since his activities as an independent consultant did not constitute the practice of a profession, but instead, constituted the carrying on of an unincorporated business. In accordance with the aforementioned Statement of Audit Changes, the Audit Division, on July 22, 1980, issued a Notice of Deficiency to petitioner asserting that \$1,242.12 of unincorporated business tax was due, together with interest of \$498.59, for a total of \$1,740.71.

3. On July 22, 1980, petitioner, in response to an Audit Division letter of June 17, 1980, remitted a check in the amount of \$1,732.63 in payment of the unincorporated business tax and interest allegedly due for the years 1974 and 1975. Petitioner made said payment under protest.

4. During the tax years at issue petitioner provided consulting services solely to the Council of the Americas (hereinafter "the Council"), a not-for-profit business association organized under section 501(c)(6) of the Internal Revenue Code. The Council membership consisted of U.S. corporations, mostly Fortune 500 style companies, all having substantial business interests in numerous Latin American countries. The Council's objectives were to strengthen and support the private enterprise system in Latin America and to promote understanding and goodwill between Latin American governments and U.S. private enterprise.

5. Petitioner advised the Council in a number of different areas, such as:

- a. how to maintain a liaison with companies that had business interests in Latin American countries and how to maintain a liaison with international organizations in other major U.S. cities;

- b. how to increase membership enrollment and revenues;
- c. on social and political events which occurred in various Latin American countries and what effect said events would mostly likely have on member companies which had business operations in said country;
- d. administrative procedures and press relations; and
- e. membership participation on program planning and execution.

6. Petitioner's educational background consisted of two years of schooling at the University of Colorado plus night courses at New York University and Columbia University in advertising and marketing. Petitioner also gained entrance into the Columbia University graduate school where he took some graduate courses in Latin American history.

7. Petitioner was employed by The Anaconda Company (hereinafter "Anaconda"), a corporation with extensive business interests in various Latin American countries, from approximately 1937 to 1972. Petitioner was first employed by Anaconda as an assistant to the advertising manager and, through numerous promotions, was eventually appointed as director of public relations. Due to Anaconda's extensive business activities in Latin America, it was necessary for petitioner to familiarize himself with Latin American history, culture, language and remain abreast of political and social events which could effect Anaconda's business. Petitioner was also responsible for fostering harmonious relations between Anaconda and the Latin American governments. In order to complete the aforementioned duties it was necessary for petitioner to make frequent trips to Anaconda's operations in Chile, Peru and Mexico.

8. During the years at issue and for many years prior thereto, petitioner was a member of the Public Relations Society of America. As a member of the

society petitioner was required to adhere to the principals of the society's Code of Professional Standards for the Practice of Public Relations.

9. There are no Federal or New York State regulatory bodies which govern or oversee the occupation of public relations consultant. There is no license which is issued to a public relations consultant nor is there any statute or regulation which prohibits petitioner from conducting his activities in corporate form. Petitioner carries no malpractice insurance.

CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law provides, inter alia, that income received from the practice of law, medicine, dentistry or architecture or from the practice of any other profession is exempt from unincorporated business tax. That 20 NYCRR 203.11(b)(1)(i) defines other profession as:

"For purposes of this subdivision, 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. The word profession implies attainments in professional knowledge as distinguished from mere skill and the application of knowledge to uses for others as a vocation. 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 even though the services involve the application of a specialized knowledge."

B. That petitioner's activities as a public relations consultant during the years at issue, although requiring special skill and knowledge, 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)(1)(i).

In Rosenbloom v. State Tax Commission, 44 A.D.2d 69, mot. for lv. to app. den. 34 N.Y.2d 518, the court listed four factors to consider when deter-

mining if an activity constituted the practice of a profession. These factors are:

1. long-term educational background generally associated with a degree in an advanced field of science or learning;
2. the requirement of a license;
3. control of the occupation by standards of conduct, ethics and malpractice liability; and
4. the barrier to carrying on the occupation as a corporation.

In the instant matter there are no licensing requirements for a public relations consultant nor are his activities governed by any Federal or New York State regulatory bodies. Additionally, there are no strict educational requirements for public relations consultants and petitioner bears no professional responsibility as to his findings (i.e. no malpractice liability). See Costa et al. v. State Tax Commission, 67 A.D.2d 1074 and cases cited therein.

C. That petitioner Julian L. Hayes is entitled to a credit of \$1,732.63 for the payment he made on July 22, 1980 as set forth in Finding of Fact "3", supra.

D. That the petition of Julian L. Hayes is granted to the extent indicated in Conclusion of Law "C", supra, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983


PRESIDENT


COMMISSIONER


COMMISSIONER