

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Betty Bock Katz : 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 1975. :

State of New York
County of Albany

David Parchuck, 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Betty Bock Katz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Betty Bock Katz
41 Pryer Ln.
Larchmont, NY 10538

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
11th day of February, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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State of New York
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David Parchuck, 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Carl D. Bellows the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl D. Bellows
Weil, Gotshal & Manges
767 Fifth Ave.
New York, NY 10153

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
11th day of February, 1983.

David Parchuck

Annie A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 11, 1983

Betty Bock Katz
41 Pryer Ln.
Larchmont, NY 10538

Dear Dr. Katz:

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
Carl D. Bellows
Weil, Gotshal & Manges
767 Fifth Ave.
New York, NY 10153
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BETTY BOCK KATZ
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1975.

DECISION

Petitioner, Betty Bock Katz, 41 Pryer Lane, Larchmont, New York 10538, 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 1975 (File No. 27647).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 22, 1981 at 9:15 A.M. Petitioner appeared with Carl D. Bellows, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner's activities as an economist constituted the practice of a profession of which the income derived therefrom is exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Betty Bock Katz (hereinafter petitioner) timely filed a New York State Combined Income Tax Return with her husband for the year 1975, whereon she reported business income of \$25,653.51 derived from her activities as an "Economist". She did not file an unincorporated business tax return for said year.

2. On March 16, 1979 the Audit Division issued a Notice of Deficiency against petitioner wherein, pursuant to an explanatory Statement of Audit Changes, the income from her activities as an economist was held subject to the unincorporated business tax. Accordingly, said notice asserted unincorporated business tax of \$860.94, plus interest of \$213.32, for a total due of \$1,074.26.

3. Petitioner contended that her business activities engaged in as an economist constituted the practice of a profession. As such, she argued that her income derived therefrom is exempt from the imposition of unincorporated business tax.

4. During the year at issue, petitioner was employed on a full-time basis by The Conference Board, Inc. The business income at issue herein was derived solely from services rendered to the law firm Weil, Gotshal & Manges during hours other than those spent with respect to her full-time employment.

5. The income at issue was derived from said law firm for services rendered with respect to two matters, as follows:

(a) Services were rendered as a consultant wherein petitioner was retained to assist said firm in its pre-trial preparation in the case entitled Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd., et al., (E.D. Pa. No. 74-2451).

(b) Services were rendered to assist said firm in its counseling of certain clients regarding new disclosure of information requirements imposed by the Federal Trade Commission.

6. Petitioner received a Ph.D degree in Economics from Bryn Mawr College in 1942.

7. Petitioner has been an Economist, specializing in the anti-trust law field for over forty years. Her prior employers included the:

(a) Research Institute of America, where she developed and was placed in charge of an anti-trust law service.

(b) Office of Small Business, Department of Commerce, where she authored a brochure on small business and pricing practices.

(c) Federal Trade Commission, where she worked on anti-trust problems and was loaned to the Attorney General's National Committee to Study Anti-Trust Laws.

8. During 1975 petitioner was an Adjunct Professor of Law at New York University School of Law.

9. Petitioner was a member of various organizations and associations including the:

(a) Board of Advisors of Columbia University Center for Law and Economic Study.

(b) Committee on Trade Regulation of the Bar Association of the City of New York.

(c) Advisory Board of the Anti-Trust Bulletin.

10. Petitioner has been a speaker at meetings of the American Bar Association, the American Bar Association - American Law Institute, the Practicing Law Institute, and the New York City and State Bar Associations.

11. Petitioner is a prolific writer on the subject of anti-trust law and has been cited on several occasions in opinions of the United States Supreme Court. She has authored several books and many of her articles have appeared in various law journals.

12. Capital was not a material income-producing factor in petitioner's business and more than 80 percent of her gross income was derived from personal services which she rendered.

13. Petitioner argued that the services which she rendered to the law firm Weil, Gotshal & Manges during 1975 did not deal with the conduct of business itself.

CONCLUSIONS OF LAW

A. That the term "other profession" as defined in 20 NYCRR 203.11(b)(1)(i) 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 performance 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 while petitioner's expertise in the field of anti-trust law litigation is undisputed, the consulting services which she rendered to Weil, Gotshal & Manges during 1975 constituted services dealing with the conduct of business itself. As such, said activities did not constitute the practice of a profession, even though the services involved the application of a specialized knowledge, pursuant to the meaning and intent of section 703(c) of the Tax Law.

C. That petitioner's activities engaged in on behalf of Weil, Gotshal & Manges during the year 1975 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Accordingly, the income derived therefrom is subject to the imposition of unincorporated business tax pursuant to section 701 of the Tax Law.

D. That the petition of Betty Bock Katz is denied and the Notice of Deficiency dated March 16, 1979 is hereby sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 11 1983

ACTING PRESIDENT

R. W. Boudland

COMMISSIONER

Francis Q. Koenig

COMMISSIONER

Mark J. Smith