

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

J. Panzarino and Sons

:

: 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 1973 & 1974.

State of New York
County of Albany

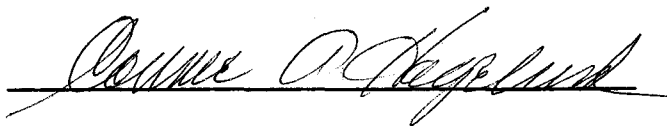
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon J. Panzarino and Sons, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Panzarino and Sons
1045 Coney Island Ave.
Brooklyn, NY 11230

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
29th day of June, 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

J. Panzarino and Sons : 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 1973 & 1974.

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 29th day of June, 1983, she served the within notice of Decision by certified mail upon Alexander Chatkin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alexander Chatkin
2508 Avenue X
Brooklyn, NY 11235

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
29th day of June, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

June 29, 1983

J. Panzarino and Sons
1045 Coney Island Ave.
Brooklyn, NY 11230

Gentlemen:

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
Alexander Chatkin
2508 Avenue X
Brooklyn, NY 11235
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
J. PANZARINO AND SONS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1973	:	
and 1974.	:	

Petitioner, J. Panzarino and Sons, 1045 Coney Island Avenue, Brooklyn, New York 11230 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 1973 and 1974. (File No. 34929).

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 November 19, 1982 at 9:15 A.M. Frank Panzarino, Partner, appeared with Alexander Chatkin, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Alfred Rubenstein, Esq., of counsel).

ISSUE

Whether petitioner's activities of moving household furnishings 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. On September 11, 1980 the Audit Division issued a Statement of Unincorporated Business Tax Audit Changes to J. Panzarino and Sons (hereinafter petitioner), wherein its income derived from its furniture moving activities of \$22,875.00 for 1973 and \$22,350.00 for 1974 was held subject to the unincorporated

business tax. Accordingly, a Notice of Deficiency was issued against petitioner on February 20, 1981 asserting unincorporated business tax of \$1,440.00, plus penalties and interest of \$1,499.70, for a total of \$2,939.70. Said penalties were asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file unincorporated business tax returns and failure to pay the tax determined to be due respectively.

2. Unincorporated business tax returns were not filed for the years at issue herein. Petitioner executed four successive consent forms extending the period of limitation on assessments to any time on or before April 15, 1981.

3. The activities engaged in by petitioner consisted principally of crating, packing and loading furniture onto a truck and transporting and delivering same to a specific destination. Estimates were provided by petitioner for such services.

4. Petitioner contended that its activities constituted the practice of a profession since at least 90% of its income was directly attributable to the personal services rendered by the partners.

CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law provides that:

"The practice of law, medicine, dentistry or architecture, and the practice of any other profession in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or members of the partnership or other entity, shall not be deemed an unincorporated business.

B. 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."

C. That 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)(1)(i).

D. That petitioner's activities during the years 1973 and 1974 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.

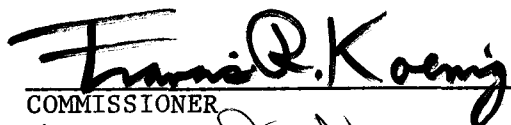
E. That the petition of J. Panzarino and Sons is denied and the Notice of Deficiency dated February 20, 1981 is sustained together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 29 1983


PRESIDENT


COMMISSIONER


COMMISSIONER