

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Karl & Jacqueline Easton : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Unincorporated :  
Business Tax under Article 23 of the Tax Law for :  
the Years 1972 - 1976. :

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State of New York }  
ss.:  
County of Albany }

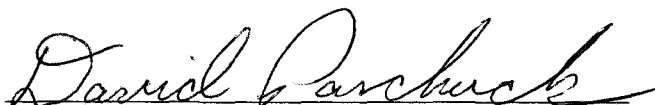
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of January, 1984, he served the within notice of Decision by certified mail upon Karl & Jacqueline Easton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Karl & Jacqueline Easton  
535 Park Ave.  
New York, NY 10021

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
20th day of January, 1984.



  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 20, 1984

Karl & Jacqueline Easton  
535 Park Ave.  
New York, NY 10021

Dear Ms. Easton:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
KARL EASTON AND JACQUALINE EASTON	:	DECISION
for Redetermination of Deficiencies or for	:	
Refunds of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1972	:	
through 1976.	:	

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Petitioners, Karl Easton and Jacqueline Easton, 535 Park Avenue, New York, New York 10021, filed petitions for redetermination of deficiencies or for refunds of unincorporated business tax under Article 23 of the Tax Law for the years 1972 through 1976 (File Nos. 23216 and 30306).

A formal hearing was held before Anthony J. Ciarlone, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 11, 1983 at 10:45 A.M., with all briefs to be submitted by July 21, 1983. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

#### ISSUES

I. Whether petitioner Karl Easton was liable for unincorporated business taxes for 1973, 1974 and 1975.

II. Whether the Notice of Deficiency for 1972 was barred by the statute of limitations.

III. Whether petitioner Jacqueline Easton was a professional exempt from unincorporated business tax.

IV. Whether petitioners had other business losses which should be combined with the unincorporated business income, if it is determined that petitioners are subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Karl Easton and Jacqueline Easton, timely filed on combined forms New York State income tax resident returns for 1972, 1973 and 1974. Petitioners timely filed joint New York State income tax resident returns for 1975 and 1976. During the years at issue, each petitioner reported business income. Copies of Federal Schedule C - Profit or (Loss) From Business or Profession - filed for 1975 and 1976 indicated Karl Easton's principal business activity as psychiatrist consultant; Jacqueline Easton's principal business activity was listed as rehabilitation center and the business name was Boerum Hill Rehabilitation Residence ("Boerum Hill"). No unincorporated business tax returns were filed during the years at issue.

2. On November 17, 1976, the Audit Division issued a Statement of Audit Changes to petitioners, Karl Easton and Jacqueline Easton, imposing personal income tax of \$107.31 for 1975 and unincorporated business tax of \$7,774.14 for 1973, 1974 and 1975, plus interest. Accordingly, on December 31, 1979, the Audit Division issued a Notice of Deficiency<sup>1</sup> to petitioners imposing additional tax due of \$7,881.45, plus interest of \$3,174.32, for a balance due of \$11,055.77. On April 13, 1978, the Audit Division issued a Statement of Audit Changes to petitioner Jacqueline Easton imposing unincorporated business tax of \$5,422.89, penalties pursuant to sections 685(a)(1) and (a)(2) of the Tax Law of \$2,184.98, plus interest for 1972 and 1976. Accordingly, on June 29, 1978, the Audit

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<sup>1</sup> The Notice of Deficiency indicated the tax years 1976, 1974 and 1975. Based on the Statement of Audit Changes, the correct tax years are 1973, 1974 and 1975. No decision will be made with reference to the personal income tax since the petition was filed with reference to unincorporated business tax only.

Division issued a Notice of Deficiency to petitioner Jacqueline Easton imposing additional tax due of \$5,422.89, plus total penalty and interest of \$3,709.75, for a balance due of \$9,132.64. The above notices of deficiency were issued on the bases that the income from the rehabilitation center was subject to unincorporated business tax.

3. Petitioner Karl Easton was director of psychiatry in the New York City Department of Welfare from 1963 to 1966. In 1967, he resigned this position and formed a real estate corporation called Cobble Hill Center (sic). The corporation was created to provide a practical alternative in the community for people discharged from mental hospitals and people who did not have a place to live or a family to care for them after their hospital discharge. Petitioner Karl Easton was president and secretary-treasurer of the corporation. Petitioner Jacqueline Easton worked as an art teacher for the corporation.

4. In 1970, Cobble Hill Center was recognized by the New York Board of Social Welfare and as a result came under the Board's regulations established for homes for adults. The regulations required a person, not a corporation, to be accountable for the operation of the home. Since petitioner Karl Easton purportedly did not want to become the proprietor and since he wanted to continue to function as a private practitioner of psychiatry, petitioner Jacqueline Easton became the accountable person for the license. An Operating Certificate, Community Residence Class, was issued to Jacqueline Easton, MA, DBA Boerum Hill Rehabilitation Residence. Petitioner Karl Easton became the psychiatric consultant to Boerum Hill and he was listed on the literature of Boerum Hill as its founder.

5. Boerum Hill was certified by New York State as a Proprietary Home for Adults. It was a residential care facility for men and women between the ages

of 18 to 60. Each resident resided in an individual room. Three meals and an evening snack were served each day. A bag lunch was prepared for residents who were not in the building at lunch time because they were working or attending schools or training programs. The staff consisted of mental health counselors, activity specialists and all other personnel necessary for the operation of a large residential hotel. The weekly rate for private residents was \$120.00. No medical services were provided by Boerum Hill. Residents were expected to consult their own physicians when the need existed. However, physicians came to Boerum Hill regularly, and the staff was to see to it that residents received medical attention when needed. No individual psychiatric treatment services were provided by Boerum Hill. However, psychiatric consultation services were utilized in the conceptual planning, therapeutic milieu, and for the staff training and education and problem situations.

6. During the years at issue, petitioner Jacqueline Easton was a certified teacher in fine arts licensed by the New York City Board of Education. She taught art classes at Boerum Hill. Mr. Irving Link, a psychiatric social worker, was the director of Boerum Hill and in this capacity he assumed the responsibilities for the day-to-day operations of the residence and its policies. Petitioner Karl Easton testified that:

"[t]he New York State regulations do not allow business corporations to be accountable for such a community residence in New York State. Therefore, I decided with the agreement of my wife, who is a professional teacher, to function as a psychiatric consultant, my wife agreed to apply for the license to the New York State Department of Social Services, Board of Social Welfare and to the Department of Mental Hygiene. She agreed to apply for the licenses as the accountable person, according to the regulations. But, it was always understood that she would function as a teacher in this new facility, that she would never be in charge of day-to-day operations, but would hire a professional director, who would then in turn hire his competent staff, which he, the professional director, would direct and supervise. My wife, it was understood, would function only as a professional teacher, which was her profession."

7. The copy of Federal Schedule C filed for 1975 indicated gross receipts of \$976,200.00, total income of \$969,755.00, total deductions of \$916,793.00, which included a deduction for salaries and wages of \$404,750.00, and a net income of \$52,962.00. The copy of Federal Schedule C filed for 1976 indicated gross receipts of \$992,625.00, total income of \$986,290.00, total deductions of \$938,886.00, which included a deduction for salaries and wages of \$388,545.00, and a net income of \$47,404.00.

8. Petitioners argued that Jacqueline Easton is not subject to unincorporated business tax because she was licensed by the State of New York Department of Mental Hygiene, by the Board of Education, City of New York as a licensed teacher of Art Therapy for Mental Patients, and by New York City Department of Health as a Supervisor of Health Personnel. However, no evidence of such licenses were submitted at the hearing except for an Operating Certificate issued in 1977 by the State of New York Department of Mental Hygiene and a license issued on January 20, 1955 by the Board of Education of the City of New York to Jacqueline Coplain (Easton) as Teacher of Fine Arts in the Junior High School and three substitute teacher licenses. They also argued that she is exempt because more than eighty per centum of the unincorporated business gross income for the taxable year was derived from personal services actually rendered by the entity.

9. No evidence or testimony was submitted at the hearing to show that petitioners had other business losses which should be combined with the business income of Boerum Hill.

10. No issue was raised in reference to the penalties imposed for tax years 1972 and 1976 for failure to file an unincorporated business tax return and for failure to pay tax shown on any return required to be filed.

CONCLUSIONS OF LAW

A. That petitioner Karl Easton was not carrying on the business of Boerum Hill during 1973, 1974 and 1975. Therefore, he is not liable for the unincorporated business tax imposed for said years.

B. That section 683(c)(1)(A) of the Tax Law provides that the tax may be assessed at any time if no return is filed. Section 683(c)(1)(A) of the Tax Law is applicable to Article 23 pursuant to section 722 of the Tax Law. Since no unincorporated business tax return was filed for 1972, the Notice of Deficiency was not barred by the statute of limitations.

C. That section 703(c) of the Tax Law defines a profession as:

"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 the members of the partnership or other entity, shall not be deemed an unincorporated business."

D. That 20 NYCRR 203.11(b)(1)(i) defines other profession as:

"...any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instructions 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."

(This regulation was effective February 1, 1974 and is similar to an earlier regulation promulgated under Article 16A of the Tax Law.)

E. That petitioners' arguments as outlined in Finding of Fact "8", supra, are without merit. The entity of Boerum Hill does not qualify as an "other



profession" with the meaning and intent of 20 NYCRR 203.11(b)(1)(i). It is the business income from this entity which is subject to unincorporated business tax and not Jacqueline Easton, a fine arts teacher. Therefore, Jacqueline Easton cannot claim an exemption as a professional in accordance with section 703(c) of the Tax Law (Matter of Hewitt v. Bates, 272 A.D. 1, aff'd 297 N.Y. 239).

F. That the income of Boerum Hill is subject to unincorporated business tax and petitioner Jacqueline Easton doing business as Boerum Hill is the person liable for the unincorporated business tax due (Frank L. Hoffman, State Tax Commission, September 19, 1980).

G. That Jacqueline Easton has failed to sustain her burden of proof to show she incurred other business losses which should be combined with the business income of Boerum Hill in accordance with 20 NYCRR 203.5. The personal income tax returns do not indicate that she carried on two or more distinct unincorporated businesses.

H. That the petitions of Karl Easton and Jacqueline Easton are granted to the extent indicated in Conclusion of Law "A", supra, and in all other respects denied and the notices of deficiency are sustained.

DATED: Albany, New York

JAN 20 1984

STATE TAX COMMISSION

Roderick W. Clem  
PRESIDENT

Francis R. Koemig  
COMMISSIONER

Mark J. J. J. J.  
COMMISSIONER