

STATE TAX COMMISSION

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

Eric J. Bressler
Wickham, Wickham & Bressler
Main Rd., P.O. Box 1424
Mattituck, NY 11952

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.

David Paruch

James A. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 25, 1984

Gerald P. McGinty
P.O. Box 878, 355 Westview Dr.
Mattituck, NY 11952

Dear Mr. McGinty:

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, 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: Petitioner's Representative
Eric J. Bressler
Wickham, Wickham & Bressler
Main Rd., P.O. Box 1424
Mattituck, NY 11952
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GERALD P. MCGINTY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1978.	:	

Petitioner, Gerald P. McGinty, P.O. Box 878, 355 Westview Drive, Mattituck, New York 11952, 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 1978 (File No. 37659).

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 3, 1983 at 1:15 P.M. Petitioner appeared with Eric J. Bressler. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner's activities as a technical writer constituted the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Gerald P. McGinty (hereinafter petitioner) and his wife, June M. McGinty timely filed a joint New York State Income Tax Resident Return for the year 1978 whereon petitioner reported business income of \$12,691.17. Pursuant to a copy of petitioner's Federal Schedule C, such income was derived from his activities engaged in as a "free-lance technical writer". Petitioner reported

gross receipts of \$16,140.34, less deductions of \$3,448.64, yielding the reported net profit from said activities of \$12,691.17.¹ Petitioner did not file an unincorporated business tax return for 1978.

2. On October 16, 1981 the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein the major portion of petitioner's reported business gross receipts was held subject to the unincorporated business tax based on the following explanation:

"We are assessing the unincorporated business tax on the income from Kenwood Electronics, Inc. (\$9,908.90), Sony Video Products Co. (\$4,500.00) and Leader Instruments Corp. (\$600.00) since the writings for these companies serve a business purpose. We prorated the expenses on Schedule C based on the gross incomes."

Accordingly, a Notice of Deficiency was issued against petitioner and his wife on April 7, 1982 asserting unincorporated business tax of \$137.40 plus interest of \$39.29, for a total due of \$176.69.

3. Petitioner's educational background consisted of completion of an intensive one year naval training course in electronics in 1947. Subsequently, he took nonmatriculated courses in mathematics at Temple University.

4. In 1947 petitioner commenced employment with Radio Corporation of America (RCA) as a technician. In 1951 he was transferred to a special group which designed the first color television receivers. Subsequently, he was transferred to the Government Division of RCA where he worked on the guided missile and instrumentation radar programs. In 1965 he was granted a private trade school teacher's license in radio and television technology. Such

¹ Although this amount is shown as the net profit on Schedule C, the gross receipts less deductions, as shown in Finding of Fact "1" supra, yields a net profit of \$12,691.70.

license was used when he joined RCA Institutes as a teacher. Ultimately, he became manager of course preparation for the Home Study Division.

5. In 1966 petitioner began employment with Sony Corporation of America (SONY) as manager of the Technical Publications Department. Subsequently, he was promoted to Assistant Vice President of Engineering. He held this position until sometime in 1977, when he left Sony's employ and began his business as a free-lance technical writer.

6. Petitioner has been a member of several technical societies and committees, including the Electronic Industries Association, Engineering Department, where he served as Chairman in 1976 and the Helical Scan Subcommittee of the Society of Motion Picture and Television Engineers.

7. During the early 1960's petitioner wrote a book on color television and a book on basic electronics. These books were used for basic training of color television repair technicians and electronic technicians respectively. Since then petitioner has written other technical books on electronics and video cassette recorders.

8. Petitioner claims exemption from the unincorporated business tax on the basis that the income at issue was derived from the practice of a profession and that his services rendered were "not primarily involved with advertising, commercials or business purposes."

9. The \$4,500.00 petitioner received from Sony in 1978 was derived from the partial production of a study course entitled "Sony Basic Video Recording Course." Said course consisted of eight (8) video tapes, each accompanied by a booklet which expanded on the material covered in the respective tape. Pursuant to a memorandum of agreement dated September 1, 1978, the intended use of the series was for "technical training or sales promotion." Petitioner was the

sole author of the series. He wrote the scripts for the video tapes, the manuscripts for the accompanying booklets, and prepared the rough art for the booklets. Petitioner was paid \$2,250.00 for each of the eight tape and booklet programs in the series. The \$4,500.00 at issue was received for completion of the first two programs entitled "Elements of Magnetic Recording" and "Video Recording". This course was made available to the general public and was sold, among other places, to schools and broadcast studios.

10. The \$600.00 petitioner received from Leader Instruments Corp. during 1978 was derived from his writing of the user's manual for the LCG-397 color analyzer-generator, a portable instrument designed for testing and adjusting color and black and white receivers and video tape recorders. Said users manual was packed with the product.

11. The \$9,908.90 petitioner received from Kenwood Electronics Inc. (Kenwood) during 1978 was derived from the following services rendered:

- a. Editing and rewriting owner's instruction manuals² for high fidelity equipment which originated in Japan - \$2,787.40.
- b. Editing and rewriting technical papers on engineering subjects for presentation and publication in professional engineering meetings and journals such as the Audio Engineering Society - \$1,000.00.²
- c. Preparing tutorial material about newly-developed technology for the purpose of educating sales people - \$5,121.50.
- d. Extensive rewriting of a book on the reduction of interference in audio products - \$1,000.00.²

12. During the hearing held herein the Audit Division conceded that the \$1,000.00 petitioner received from Kenwood for the "editing and rewriting of

² These amounts constituted petitioner's estimate of compensation received for each category of service rendered.

technical papers on engineering subjects for presentation and publication in professional meetings and journals" is exempt from the imposition of unincorporated business tax.

13. Petitioner's wife, June M. McGinty, was not engaged in an unincorporated business during the year at issue herein.

CONCLUSIONS OF LAW

A. That the \$1,000.00 petitioner received during 1978 from Kenwood for the "editing and rewriting of technical papers on engineering subjects for presentation and publication in professional meetings and journals" is exempt from the imposition of unincorporated business tax as such was conceded by the Audit Division.

B. That 20 NYCRR 203.11(b)(1)(i) provides in pertinent part that:

"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."

C. That petitioner's activities during 1978 as a technical writer for his three aforestated principals (with the exception of those activities engaged in for Kenwood as provided for in Conclusion of Law "A" supra), dealt with the conduct of business itself. Accordingly, such 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 the activities of petitioner, Gerald P. McGinty (with the exception of those activities provided for in Conclusion of Law "A" supra) constituted the carrying on of unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income derived therefrom is subject to the imposition of unincorporated business tax pursuant to section 701(a) of the

Tax Law. (Matter of the Petition of Eugene Ehrlich, STC decision, November 28, 1980, Matter of the Petition of Joel Annis, STC decision, July 31, 1981).

E. That the name of petitioner's wife, June M. McGinty, is to be removed from the Notice of Deficiency since she was not engaged in an unincorporated business during the year at issue.

F. That the petition of Gerald P. McGinty is granted to the extent provided in Conclusions of Law "A" and "E" supra and except as so granted, said petition is, in all other respects denied.

G. That the Audit Division is hereby directed to adjust the Notice of Deficiency dated April 7, 1982 to be consistent with the decision rendered herein.


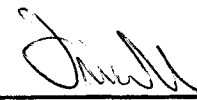
DATED: Albany, New York

STATE TAX COMMISSION

MAY 25 1984


PRESIDENT


COMMISSIONER

 
COMMISSIONER