

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert Sr. & Marie Trenga : 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 1965, 1968 - 1970. :

State of New York }

ss.:

County of Albany }

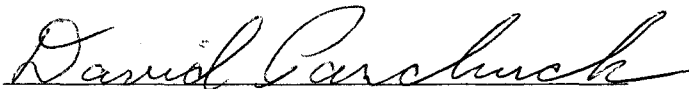
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of April, 1984, he served the within notice of Decision by certified mail upon Robert Sr. & Marie Trenga, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

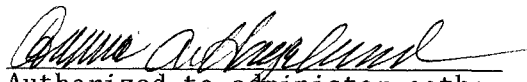
Robert Sr. & Marie Trenga
10 Jones Ave.
East Syracuse, NY 13057

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
6th day of April, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

April 6, 1984

Robert Sr. & Marie Trenga
10 Jones Ave.
East Syracuse, NY 13057

Dear Mr. & Mrs. Trenga:

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 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

In the Matter of the Petition
of
ROBERT TRENGA, SR. and MARIE TRENGA
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1965,
and 1968 through 1970.

DECISION

Petitioners, Robert Trenga, Sr. and Marie Trenga, 10 Jones Avenue, East Syracuse, New York 13057, 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 1965, and 1968 through 1970 (File No. 11715).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 9, 1980 at 1:15 P.M. and continued to conclusion on June 17, 1981 at 9:15 A.M. Petitioner Robert Trenga, Sr. appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner was engaged in the practice of public accountancy and therefore not subject to unincorporated business tax pursuant to section 703(c) of the Tax Law.

II. Whether petitioners are entitled to an unincorporated business deduction for the reasonable value of services rendered by a spouse.

FINDINGS OF FACT

1. Petitioners, Robert Trenga, Sr. and Marie Trenga, filed, but not timely, New York State income tax resident returns for 1965, and 1968 through 1970. Petitioner Robert Trenga, Sr. reported net income from his accounting

services of \$11,437.89, \$13,144.75 and \$13,886.82 for the years 1968 through 1970 respectively. Petitioner Robert Trenga, Sr. reported on the tax returns his occupation as that of a tax consultant and petitioner Marie Trenga as a housewife.

2.(a) The Audit Division issued a Statement of Audit Changes to the petitioners on the grounds that \$41.15 was due on the petitioners' personal income tax return for 1965 and that petitioner Robert Trenga, Sr.'s business activities for 1968 through 1970 were subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on September 25, 1972 for \$41.15 in personal income tax and \$754.15 in unincorporated business tax, plus penalty, pursuant to section 685(a) of the Tax Law, of \$193.60, and interest of \$126.83, for a total of \$1,115.73.

2.(b) The petition filed in this matter requested a redetermination of unincorporated business tax for the years 1968, 1969 and 1970. Accordingly, the personal income tax due for 1965 is not at issue.

2.(c) A Notice and Demand showing penalty of \$250.00 under section 685(i) of the Tax Law with assessment number AD234671 was paid and applied against this deficiency leaving a balance due of \$865.73. The petitioners paid an additional \$26.29 of interest against the 685(i) penalty which was not applied against the deficiency.

3. Petitioner Robert Trenga, Sr. asserted that he was engaged in the practice of the profession of accounting, and that said income was not subject to unincorporated business tax.

4. Petitioner Robert Trenga, Sr. graduated in 1955 from LeMoyne College in Syracuse, New York, majoring in general business. During his undergraduate work at LeMoyne College, the petitioner studied introduction to accounting and

intermediate accounting. He later studied income tax accounting and restudied intermediate accounting at Syracuse University.

5. Petitioner opened his accounting practice in 1955. He operated the practice on a part-time basis for five years while working for Penn Mutual Life Insurance Company. During the years at issue, petitioner was working full time at his accounting practice providing tax planning, financial consulting, and preparing budgets, financial statements and tax returns. More than 80 percent of his business gross income was derived from personal services and capital was not a material income-producing factor.

6. Petitioner Robert Trenga, Sr. carried malpractice liability as a private accountant.

7. Petitioner contended that he did not obtain a license from the New York State Education Department because he did not know five certified or public accountants that could certify to his moral character.

8. Petitioner contended that if his income from his activities is found subject to unincorporated business tax, that an additional \$3,240.00 a year should be allowed for the service rendered by his wife. No evidence was submitted that petitioner's wife received a wage statement or information return. There was no evidence that petitioner's wife was paid a salary, had payroll taxes withheld, or was treated in the same manner as other employees.

9. Petitioner Marie Trenga was not engaged in any unincorporated business during the years at issue.

CONCLUSIONS OF LAW

A. That petitioner Robert Trenga, Sr.'s. activities constituted the practice of public accountancy and accordingly are considered to be professional

activities within the meaning and intent of section 703(c) of the Tax Law and 20 NYCRR 203.11(b).

B. That Issue II herein is moot in view of Conclusion of Law "A" supra.


C. That the Audit Division is hereby directed to refund the penalty and interest paid on the Notice and Demand mentioned in Finding of Fact "2(c)".

D. That the petition of Robert Trenga, Sr. and Marie Trenga is granted and the Notice of Deficiency issued September 25, 1972 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1984


PRESIDENT


COMMISSIONER


COMMISSIONER