

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Parkmed Associates & Parkmed Co. :  
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 1973, 1974 & 1975. :  
:

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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 15th day of March, 1985, he served the within notice of Decision by certified mail upon Parkmed Associates & Parkmed Co., the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Parkmed Associates & Parkmed Co.  
475 Park Ave. So.  
New York, NY 10016

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  
15th day of March, 1985.

David Parchuck

Conrad O. Hegeland  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

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

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 15th day of March, 1985, he served the within notice of Decision by certified mail upon Richard A. Kerner, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard A. Kerner  
30 Vesey St.  
New York, NY 10007

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 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  
15th day of March, 1985.

David Carabuck

Connie J. Hagedorn  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 15, 1985

Parkmed Associates & Parkmed Co.  
475 Park Ave. So.  
New York, NY 10016

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, 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  
Richard A. Kerner  
30 Vesey St.  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition                | : |          |
|  | : |          |
| of   | : |          |
|  | : |          |
| PARKMED ASSOCIATES and PARKMED COMPANY       | : | DECISION |
|  | : |          |
| for Redetermination of a Deficiency or for   | : |          |
| Refund of Unincorporated Business Tax under  | : |          |
| Article 23 of the Tax Law for the Years 1973 | : |          |
| through 1975.                                | : |          |

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Petitioners, Parkmed Associates and Parkmed Company, 475 Park Avenue South, New York, New York 10016, 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 through 1975 (File No. 22926).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1979 at 1:15 P.M. Petitioners appeared by Richard A. Kerner, Esq. The Audit Division appeared by Peter J. Crotty, Esq. (J. Ellen Purcell, Esq. and Irving Atkins, Esq., of counsel).

Petitioners commenced an Article 78 proceeding to review the State Tax Commission determination issued November 27, 1981. The Appellate Division, Third Department, confirmed the determination and petitioners took an appeal to the Court of Appeals. The Court of Appeals reversed the judgment and remitted the matter to the Appellate Division for further proceedings. The Appellate Division remitted the matter to the State Tax Commission for another determination.

On remand, a formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 31, 1984 at 10:00 A.M., with all briefs to be

submitted by February 4, 1985. Petitioners appeared by Dr. Milton Danon, Partner and Executive Director. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

#### ISSUE

Whether petitioners were engaged in the practice of medicine, thus qualifying for a professional exemption from unincorporated business tax.

#### FINDINGS OF FACT

1. Petitioners, Parkmed Associates and Parkmed Company, filed New York State partnership returns for the years 1973 through 1975. However, they did not complete Schedule U-D pertaining to unincorporated business tax but did write in the words "not applicable".

2. On February 28, 1977, petitioners signed a consent fixing period of limitation upon assessment of personal income and unincorporated business tax on or before April 15, 1978.

3. On June 22, 1977, the Audit Division issued a Statement of Audit Changes against petitioners for the years 1973 through 1975 for unincorporated business tax. Subsequently, the Audit Division issued a Notice of Deficiency for the years 1973 through 1975 against petitioners on April 12, 1978, asserting unincorporated business tax of \$78,077.07, plus interest of \$19,237.56, for a total due of \$97,314.63.

4. Petitioners timely filed a petition for redetermination of a deficiency or for refund of unincorporated business tax for the years 1973 through 1975.

5. Petitioners owned and operated an abortion clinic in New York City. Parkmed Associates is a limited partnership and Parkmed Company is a general partnership. According to the partnership agreement, there are three general partners in each: two doctors and one accountant. One of the general partners,

Dr. Milton Danon, devotes 100 percent of his time to the clinic. Each of the other two general partners, Dr. Saul Drubin and Mr. Gregory Cinnella, devotes approximately 5 percent of his time to the business. Each of the three general partners is also a limited partner in Parkmed Associates.

6. Parkmed Associates, the limited partnership, was originally established to operate the clinic. The New York State Department of Health, however, would not issue an operating certificate to a limited partnership and suggested that a general partnership be formed. As a result, Parkmed Company, the general partnership, was established. The Department of Health then issued an operating certificate to Parkmed Company but not Parkmed Associates. In the actual operation of the business, however, the two partnerships were viewed as one entity known as Parkmed on letterheads, checking accounts and insurance policies.

7. Dr. Milton Danon, a medical doctor and Executive Director of the clinic was, during the period involved herein, a full-time partner responsible for overall supervision. As such, he set the rules and regulations governing patient care. He and his deputy performed less than 20 percent of the abortions and trained other doctors who performed abortions at the clinic. The Deputy Medical Director, also a medical doctor, was also a full-time employee.

8. Petitioners retained seven medical doctors to perform abortions. These doctors, who performed most of the abortions and other related activities, were engaged as independent contractors, and paid a weekly amount arrived at by multiplying the number of abortions performed each week by a fixed fee per abortion. During the years at issue, the clinic charged \$150.00 per abortion, \$30.00 of which was remitted without any deductions to the operating physician.

9. Dr. Milton Danon and his deputy supervised the independent contractors (medical doctors) in a very general way. They did not usually see the patients who were operated on by the independent contractors unless an emergency arose.

10. The other general partners were not involved in patient care for any appreciable amount of time. Dr. Drubin and Mr. Cinnella both received profits as limited partners in Parkmed Associates. All the remaining partners devoted no time to the clinic, but rather merely invested their capital in the business. There were 26 partners in 1973, 29 partners in 1974 and 44 partners in 1975.

#### CONCLUSIONS OF LAW

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

"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."

B. That petitioners were not engaged in the practice of medicine. The limited partnership had no certificate to practice medicine and only one partner in the general partnership spent any significant time actually engaged in the practice of medicine. Petitioners were comprised of a group of speculators who invested their capital in a commercial enterprise in partnership form and then shared in the profits of the venture. The activities of such an enterprise do not constitute the practice of a profession so as to be exempt from the unincorporated business tax under section 703(c) of the Tax Law.

C. That the petition of Parkmed Associates and Parkmed Company is denied and the Notice of Deficiency issued April 12, 1978 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 15 1985

Rodrick W. Chun  
PRESIDENT

Thomas Q. Koenig  
COMMISSIONER

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COMMISSIONER

I dissent based upon the arguments set forth  
in the opinion of Mr. Justice Levine, at  
94 A.D.2d 344.

Mark J. ...