

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Roslyn L. Willett :
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 Year 1975. :
:

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 18th day of January, 1985, he served the within notice of Decision by certified mail upon Roslyn L. Willett, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Roslyn L. Willett
Box 106, Hunn's Lake Road
Stanfordville, NY 12581

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
18th day of January, 1985.

David Parchuck

Bonnie R. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 18, 1985

Roslyn L. Willett
Box 106, Hunn's Lake Road
Stanfordville, NY 12581

Dear Ms. Willett:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ROSLYN L. WILLETT

DECISION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1975.

Petitioner, Roslyn L. Willett, Box 106, Hunn's Lake Road, Stanfordville, New York 12581, 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 1975 (File No. 28237).

A small claims hearing was commenced before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 23, 1982 at 10:45 A.M and continued to conclusion on March 14, 1984 at 9:15 A.M., with final briefs submitted on April 19, 1984. Petitioner appeared pro se. The Audit Division appeared at the hearing on March 23, 1982 by Paul B. Coburn, Esq. and at the hearing on March 14, 1984 by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a public relations consultant and food service consultant constituted the practice of a profession for unincorporated business tax purposes.

II. Whether the deficiency at issue should be dismissed on the ground that the Law Bureau's answer was served more than 60 days from the date of receipt of the petition.

FINDINGS OF FACT

1. Roslyn L. Willett (hereinafter petitioner) timely filed a New York State Combined Income Tax Return with her husband for the year 1975 whereon she reported business income of \$16,471.59 derived from her activities engaged in as a "consultant". She did not file a New York State unincorporated business tax return for said year.

2. On November 16, 1978, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held her reported business income subject to the unincorporated business tax. Accordingly, a Notice of Deficiency was issued against petitioner on July 27, 1979 asserting unincorporated business tax of \$424.69, plus interest of \$118.38, for a total due of \$543.07.

3. On September 26, 1979, petitioner filed a petition wherein she claimed relief on the ground that "her basic profession is teaching". In response thereto, the Law Bureau served an answer to said petition on May 14, 1981. (The answer was first mailed inadvertently to an incorrect address on April 14, 1981 and subsequently remailed to the correct address on the date stated above.)

4. During 1975, petitioner owned and operated Roslyn Willett Associates, a sole proprietorship engaged, according to petitioner's Schedule C, in the principal business activity of rendering "consulting services".

5. In response to an Audit Division inquiry letter issued with respect to 1975, petitioner stated that the exact nature of her business activities was "public relations and food service consultant". Her business card indicates "Roslyn Willett Associates - Consultants - Marketing.Communications.Food Service" while her letterhead shows "Roslyn Willett Associates - Consultants - Public Relations and Marketing.Food Service". During the hearing held herein,

petitioner claimed to have been engaged during 1975 in the practices of "Accredited Public Relations Counselor", "Food Chemist" and "Consulting Dietitian".

6. Petitioner organized Roslyn Willett Associates in 1959. During 1975 the business was operated from an office maintained in New York City as well as from her home in Stanfordville, New York. The business undertook consulting for a variety of organizations in the manufacturing, service, utility, and packaging fields and in government. It has been responsible for precedent-setting product and systems development for the food service market; for distinctive multi-dimensional public relations and communications programs in office equipment and other fields; and for marketing studies that have resulted in major changes in their fields.

7. Petitioner received a Bachelor's Degree from Hunter College in June, 1944 in foods and nutrition (home economics) with education courses. Subsequently, she took graduate courses in institution management at Teachers College, Columbia University and in food technology at the Graduate School of Engineering, New York University.

8. Petitioner's work background associated with the field of public relations is as follows:

(a) Editor for McGraw-Hill, 1949-1950

(b) Editor for Laurel Publications and other publishing companies
1950-1954

(c) Public Relations Practitioner, Farley Manning Associates, 1954-1958

(d) Founded Roslyn Willett Associates, 1959

9. Petitioner is a member of the Public Relations Society of America.

10. Petitioner's work background associated with the field of food service is as follows:

- (a) Dietitian for YWCA Central Club for Nurses, 1944
- (b) Food Chemist for Stein, Hall & Company, 1944-1948
- (c) Food Chemist and Dietetics Consultant for the Medical Department of Equitable Life Assurance Society, 1955
- (d) Founded Roslyn Willett Associates, 1959

11. Petitioner contended that most of her food service activities were scientific in nature, requiring a knowledge of foods, chemistry, nutrition and medicine. She held no license in any of the related food service activities.

12. Petitioner is a member of the International Society of Food Service Consultants, the American Home Economics Association, the Institute of Food Technologists, the Foodservice Consultants Society International and the Society for Advancement of Foodservice Research. She is also a member of the New York Academy of Sciences.

13. Petitioner has written numerous published articles on food service. Additionally, she has been a guest lecturer at various schools, businesses and institutions.

14. Petitioner purported to have received fees during 1975 as follows:

(a) public relations counseling	\$25,000.00
(b) nutrition education, school lunch, vocational education consulting to United Community Corporation (a federally funded non-profit organization), work as a teacher	\$19,000.00
(c) consulting dietitian to Emanuel Celler office building cafeteria. (GSA subcontract)	\$ 2,500.00
(d) food chemist for National Portion Control, a division of Hershey Foods	\$ 3,000.00
(e) consulting dietitian. Set up a hospital food service system for a manufacturer	<u>\$ 1,000.00</u>
Total fees for 1975	<u>\$50,500.00</u>

15. Petitioner reported gross receipts of \$70,270.00 on her 1975 Federal Schedule C. She contended that the difference between reported gross receipts and fees received represented reimbursed expenses.

16. Petitioner submitted a breakdown of unreimbursed business expenses. Pursuant to such breakdown, she incurred unreimbursed business expenses of \$11,528.41 attributable to her income of \$25,000.00, derived from her public relations counseling activities, yielding net income from such activities of \$13,471.59. Unreimbursed business expenses of \$22,500.00 were attributable to income of \$25,500.00 derived from her food service consulting activities, yielding net income from such activities of \$3,000.00.

17. Petitioner employed assistants in her business. The record is devoid of information concerning the qualifications of such individuals or the nature of the work actually performed by them.

18. Capital was not a material income-producing factor in the conduct of petitioner's business.

CONCLUSIONS OF LAW

A. That regulation section 601.6(a)(4) provides that where the Law Bureau fails to answer within the prescribed time, the State Tax Commission may either grant a default or "shall determine such other appropriate relief that it deems is warranted." The record does not indicate that the untimely service of an answer has unduly prejudiced or adversely affected petitioner in this matter and there is no evidence or indication of a denial of due process. Further, the requirement that the Law Bureau "...file an answer within '60 days' from a specified date should not be regarded as mandatory but is directory only" (Matter of Jay S. and Rita T. Hamelburg v. State Tax Commission, Albany County

Special Term, Prior, J., December 6, 1979). Accordingly, a determination on default is denied and any similar relief is not warranted.

B. That tax deductions and exemptions depend upon clear statutory provisions and the burden is upon the taxpayer to establish a right to them (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193; Matter of Central Office Alarm Co. v. State Tax Commission, 58 A.D.2d 162).

C. That regulation section 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." (Emphasis supplied.)

D. That petitioner's various food service activities and public relations activities constituted consulting services which dealt with the conduct of business itself. As such, said activities did not constitute the practice of a profession pursuant to 20 NYCRR 203.11(b)(1)(i) (Matter of Charles A. Moses, State Tax Commission, September 19, 1980).


E. That petitioner's consulting activities during the year 1975 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 from said activities is subject to the imposition of unincorporated business tax pursuant to section 701(a) of the Tax Law.


F. That the petition of Roslyn L. Willett is denied and the Notice of Deficiency dated July 27, 1979 is sustained together with such additional interest as may be lawfully owing.

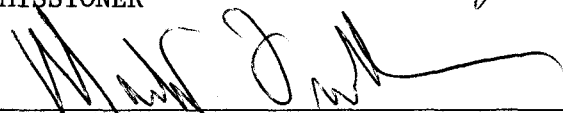
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1985


PRESIDENT


COMMISSIONER


COMMISSIONER