

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leeam Weathers-Lowin & Jean Weathers-Lowin : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Year 1980. :

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of October, 1986, he/she served the within notice of Decision by certified mail upon Leeam Lowin & Jean Lowin the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leeam & Jean Lowin
21 Fox Run Lane
Greenwich, CT 06831

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 October, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

October 20, 1986

Leeam & Jean Lowin
21 Fox Run Lane
Greenwich, CT 06831

Dear Mr. & Mrs. Lowin:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

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

LEEAM WEATHERS-LOWIN AND JEAN WEATHERS-LOWIN

DECISION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1980.

Petitioners, Leeam Weathers-Lowin and Jean Weathers-Lowin, 21 Fox Run Lane, Greenwich, Connecticut 06831, 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 1980 (File No. 61105).

A 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 May 14, 1986 at 2:45 P.M. Petitioner Leeam Weathers-Lowin appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether petitioner Leeam Weathers-Lowin's 1980 business activities were carried on without New York State, during such time as he was a nonresident of New York, thereby rendering such income exempt from unincorporated business tax.

II. Whether petitioner Leeam Weathers-Lowin's activities as a "risk-reward analyst" constituted the practice of a profession, thereby rendering his business income derived therefrom exempt from unincorporated business tax.

FINDINGS OF FACT

1. Leeam Weathers-Lowin (hereinafter "petitioner") and his wife, Jean Weathers-Lowin, timely filed a New York State Income Tax Resident Return for the year 1980 whereon petitioner reported business income of \$363,434.00. On said return, petitioner's occupation was reported as "investor". Petitioner did not file an unincorporated business tax return for 1980.

2. On October 29, 1983, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's net profit from business of \$363,434.00 was held subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued against them on January 5, 1984 asserting unincorporated business tax of \$14,137.36, penalties of \$6,154.50 and interest of \$4,617.65, for a total due of \$24,909.51. Said penalties were asserted for failure to file a 1980 unincorporated business tax return, failure to pay the tax determined to be due and failure to file a declaration of estimated unincorporated business tax pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law respectively. Said sections are incorporated into Article 23 of the Tax Law by section 722(a).

3. Petitioner alleges that his business income is exempt from the imposition of unincorporated business tax since:

(a) such income was derived from his activities as a "risk-reward analyst" and that such activities constituted the practice of a profession; and

(b) such income was earned in California while he was a resident of said state.

4. Petitioner further claims that, based on the above, such income was mistakenly reported for personal income tax purposes. However, he did not

raise this as an issue herein since the period of limitations for refunds of personal income tax had previously expired.

5. Prior to May 1980, petitioner was a resident of California.

6. On May 5, 1980, petitioner sold his California home and moved to New York. He stayed in a hotel in Westchester County while construction on his New York home was being completed. In July 1980, he moved into the garage of his New York home and, in September 1980, he completed his move into the home.

7. Petitioner is a world-renowned expert on risk-reward analysis. His specialty is in the area of investments.

8. Petitioner's 1980 business income of \$363,434.00 was derived from activities which consisted of advising clients of which investments to make based on his analysis of the stock market and events affecting the market.

9. On petitioner's 1980 Federal Schedule C, he reported his main business activity as "consulting". In a letter to the Audit Division dated November 17, 1983, petitioner stated that his profession was "investment consultant".

10. All of petitioner's 1980 business income was earned and received prior to his move to New York. The services relative to the receipt of such income were rendered by petitioner in an office maintained in his home in California. His business gross receipts for 1980 were \$392,370.00. Of said amount, \$350,000.00 was derived from one client who realized a gain of nearly one million dollars based on petitioner's advice.

11. Petitioner attended Columbia University, but he dropped out prior to graduating.

12. All of petitioner's business gross income was derived from personal services he personally rendered.

13. Capital was not an income producing factor in petitioner's business.
14. Petitioner's wife was not involved in his business activities.

CONCLUSIONS OF LAW

A. That, in general, an unincorporated business is carried on at any place either within or without New York State where the unincorporated business entity has a regular place of business (20 NYCRR 207.2[a]).

B. That petitioner's entire unincorporated business was carried on in the State of California during that portion of 1980 during which he was a resident of said state. Accordingly, the income derived therefrom is not subject to New York State unincorporated business tax.


C. That in view of Conclusion of Law "B", supra, the issue with respect to whether petitioner's activities constituted the practice of a profession is moot.

D. That the petition of Leeam Weathers-Lowin and Jean Weathers-Lowin is granted and the Notice of Deficiency issued January 5, 1984 is cancelled.

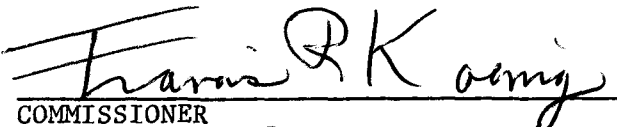
DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986



PRESIDENT



COMMISSIONER



COMMISSIONER