

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
RONALD A. COMO and SIRIWAN K. COMO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Personal Income and Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~xxxxxxx~~ :  
1967, 1968, 1969 and 1970.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of April , 1979, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Ronald A. & Siriwan K. Como

~~representative of~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Ronald A. & Siriwan K. Como  
8 Baldwin Road  
Saddle River, New Jersey 07458

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) 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~~  
~~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

6th day of April , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

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1967, 1968, 1969 and 1970.

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of April, 1979, He served the within

Notice of Decision by (certified) mail upon Cyril H. Hermele, CPA &  
Arthur Birnbaum, CPA  
(representative of) the petitioner in the within proceeding,

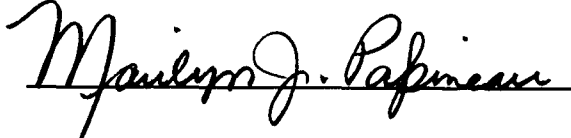
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Cyril H. Hermele, CPA &  
as follows: Arthur Birnbaum, CPA  
225 Broadway  
New York, New York

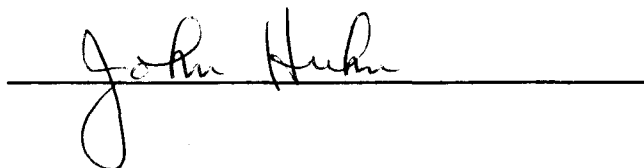
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last known address of the (representative of the) petitioner.

Sworn to before me this

6th day of April, 1979.







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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

April 6, 1979

Ronald A. & Siriwan K. Como  
8 Baldwin Road  
Saddle River, New Jersey 07458

Dear Mr. & Mrs. Como:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**MICHAEL ALEXANDER**  
**SUPERVISING TAX HEARING OFFICER**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
RONALD A. COMO and SIRIWAN K. COMO	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Personal Income and Unin-	:	
corporated Business Taxes under Articles	:	
22 and 23 of the Tax Law for the Years	:	
1967, 1968, 1969 and 1970.	:	

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Petitioners, Ronald A. Como and Siriwan K. Como, 8 Baldwin Road, Saddle River, New Jersey 07458, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1967 through 1970 (File Nos. 00150 and 00151).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 12, 1976 at 10:45 A.M. Petitioners appeared by Cyril H. Hermele, CPA and Arthur Birnbaum, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUES

I. Whether petitioners are exempt from unincorporated business tax on the grounds that they practice a profession within the purview of subdivision (c) of section 703 of the Tax Law.

II. If petitioners' activities constitute the carrying on of an unincorporated business, whether the Income Tax Bureau correctly allocated the income derived from said activities to sources within and without New York State pursuant to section 707(c) of the Tax Law.

III. Whether the Income Tax Bureau correctly allocated petitioners' income pursuant to section 632(c) of the Tax Law and 20 NYCRR 131.13.

IV. Whether the deficiency originally asserted for 1967, 1968 and 1969 for unincorporated business taxes can subsequently be increased by (a) additional unincorporated business taxes for said years and (b) additional personal income taxes for said years.

V. Whether the claims for additional unincorporated business taxes and personal income taxes are barred by the Statute of Limitations.

#### FINDINGS OF FACT

1. Petitioners, Ronald A. Como and Siriwan K. Como, timely filed joint New York State income tax nonresident returns for 1967, 1968, 1969 and 1970.

2. Petitioners failed to file New York State unincorporated business tax returns for 1967, 1968, 1969 and 1970 on or before the prescribed date, and failed to pay unincorporated business tax for 1967, 1968, 1969 and 1970 on or before the prescribed date for the payment of said tax.

3. On May 22, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioner Ronald A. Como, imposing unincorporated business tax on the income received by him during 1967, 1968 and 1969, as well as penalties (pursuant to section 685(a), 685(a)(1) and 685(a)(2) of the Tax Law) and interest, for a total deficiency of \$2,040.18 as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1967	\$ 197.72	\$ 49.43	\$ 48.67	\$ 295.83
1968	484.53	121.03	90.20	695.76
1969	<u>737.85</u>	<u>217.67</u>	<u>93.08</u>	<u>1,048.60</u>
Total	\$1,420.10	\$388.13	\$231.95	\$2,040.18

4. On August 15, 1972, petitioner Ronald A. Como timely filed a petition for redetermination of a deficiency or for refund of unincorporated business tax for 1967, 1968 and 1969.

5. On March 25, 1974, the Income Tax Bureau issued a Notice of Claim addressed to petitioners, Ronald A. Como and Siriwan K. Como, asserting (pursuant to section 689(d)(1) of the Tax Law) a greater deficiency than that asserted under the Notice of Deficiency dated May 22, 1972. Said greater deficiency was based on the business allocation being increased and allocated as follows:

Property percentage	80.42%
Wages percentage	100.00%
Sales percentage	<u>100.00%</u>
Total Percentage	280.42%

280.42% divided by 3 = New York allocation percentage of 93.47%. Pursuant to said Notice of Claim, the Income Tax Bureau

asserted additional personal income and unincorporated business tax against petitioners for 1967, 1968 and 1969 as follows:

	<u>1967</u>	<u>1968</u>	<u>1969</u>
Additional Personal Income Tax	\$ 733.67	\$1,538.31	\$2,116.02
Additional Unincorporated Business Tax	<u>347.90</u>	<u>740.29</u>	<u>1,050.41</u>
Total Additional Tax	<u>\$1,081.57</u> + <u>\$2,278.60</u> + <u>\$3,166.43</u> = \$6,526.60		
Section 685(a) Penalty	86.97	185.07	-
Section 685(a)(1) and 685(a)(2) Penalty	<u>-</u>	<u>-</u>	<u>372.89</u>
Total Penalty	<u>\$ 86.97</u> + <u>\$ 185.07</u> + <u>\$ 372.89</u> = \$ 644.93		

6. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioner Ronald A. Como, imposing unincorporated business tax on the income received by said petitioner during 1970, as well as penalties (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) and interest, for a total deficiency of \$3,630.14 as follows:

<u>DEFICIENCY</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,290.89	\$927.81	\$411.64	\$3,630.14

7.(a) On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioners, Ronald A. Como and Siriwan K. Como, imposing additional personal income taxes for 1970 amounting to \$2,987.36, plus interest thereon of \$569.48, for a total amount of \$3,556.84.

(b) On July 5, 1974, petitioners timely filed a petition for redetermination of a deficiency or for refund of unincorporated business tax and personal income tax for 1970.

8.(a) Petitioners, Ronald A. Como and Siriwan K. Como, have Master's degrees in economic theory, money, banking and finance. Both have completed their Doctoral programs, except for the completion of their dissertations.

(b) Petitioner Ronald A. Como is engaged in the occupation of "corporate and business planning," acting as advisor to large corporate organizations regarding a variety of problems and programs that require advanced knowledge in economics, banking and finance, including the analysis of financial structures and needs and the planning and preparation of documentation for submission to the S.E.C.; in connection therewith, he collaborates with counsel and accountants representing such corporate organizations. In addition, he has been engaged as an expert by governmental and non-governmental litigants and has also organized professional seminars.

9. The practice by Ronald A. Como of his aforesaid occupation does not require a license and is not subject to control by standards of conduct, ethics and malpractice liability.

10.(a) During 1967 through 1970, petitioner Ronald A. Como maintained an office at 32 Broadway, New York, New York. Said office was used for research, analytic work and meetings and was staffed by a secretary and assistants.

(b) During 1967 through 1970, petitioners' home was at 8 Baldwin Road, Saddle River, New Jersey, one room of which was used by Ronald A. Como for the development of reports and



memorandums to clients, the maintenance of business records and the handling of correspondence. During the aforesaid years, he did not employ assistants in his home.

11. During 1970 petitioner Ronald A. Como worked 138 days outside New York State, 18 of which were spent in his home at 8 Baldwin Road, Saddle River, New Jersey, and five of which were spent in the solicitation of new business.

12. During 1967 through 1970, more than 80% of Ronald A. Como's gross income for each of said years was derived from personal services actually rendered by him. Capital was not a material income producing factor.

13.(a) Ronald A. Como did not submit books and records of his business to the Income Tax Bureau, disclosing the proportion of the net amount of items of income, gain, loss and deductions attributable to the activities of the business carried on within New York State.

(b) Ronald A. Como submitted a New York State Business Allocation Schedule, Form IT-202-A, to the Income Tax Bureau, in which he allocated 80.42% to property percentage, 67.95% to payroll percentage and 28.20% to gross income percentage for 1970.

(c) Petitioners reported in their New York State joint income tax nonresident returns for 1967, 1968, 1969 and 1970, respectively, that the percentage of "Allocation of business income to New York State" was 50%.

14. In the absence of books and records of Ronald A. Como's business disclosing the proportion of the net amount of items of

income, gain, loss and deductions attributable to the activities of the business carried on in New York, the Income Tax Bureau adopted the formula basis set forth in 20 NYCRR 131.13 for the determination of the proportion of petitioner's business attributable to New York State sources. It allocated (as aforesaid) 80.42% to property percentage, 100% to payroll percentage and 100% to gross income percentage.

15. Petitioners omitted from their New York adjusted gross income (as reported in their New York State income tax nonresident returns for 1967, 1968, 1969 and 1970) amounts properly includable therein which are in excess of twenty-five percent of the amount of New York adjusted gross income for each of said years.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner Ronald A. Como as a corporate and business planner during 1967, 1968, 1969 and 1970, although requiring special knowledge and experience, did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law. Therefore, the income derived from said activities is subject to unincorporated business tax.

B. That timely assertions of claims for additional personal income taxes of petitioners were made for 1967, 1968, 1969 and 1970, pursuant to section 689(d)(1) of the Tax Law and the rules of the Tax Commission.

C. That in the absence of books and records disclosing (to the satisfaction of the Tax Commission) the proportion of

the net amount of the items of income, gain, loss and deduction attributable to the activities carried on in New York by petitioner Ronald A. Como during 1967 through 1970, application of the formula basis was proper, pursuant to sections 632(c) and 707(c) of the Tax Law.

D. That the burden of proof was on petitioner Ronald A. Como, with respect to the proportion of the items of income, gain, loss and deduction attributable to the activities carried on by him in New York for 1970, but on the Tax Commission for 1967, 1968 and 1969, pursuant to section 689(e)(3) of the Tax Law.

E. That petitioner Ronald A. Como did not sustain the burden of proof with respect to the proportion of the items of income, gain, loss and deduction attributable to the activities carried on by him in New York during 1970. Accordingly, since Ronald A. Como failed to sustain the burden of proof with respect to income attributable to sources outside New York for 1970, the claim for additional personal income and unincorporated business tax asserted against Ronald A. and Siriwan K. Como for 1970 was proper on the basis of the allocation of 80.42% as to the property percentage ("per IT-202-A" submitted by petitioners) and 100% as to the "wages and salary percentage" and 100% as to the "sales percentage."

F. That based on the admissions made by petitioners in their New York State income tax non-resident returns for 1967, 1968, 1969 and 1970, and in Form IT-202-A submitted to the

Income Tax Bureau with respect to 1970, the claim for additional personal income and unincorporated business tax asserted against them for 1967, 1968 and 1969 is proper to the extent of the allocation of 80.42% as to the "property percentage," 67.95% as to the "wages and salary percentage," and 50% as to the "sales percentage."

G. That the Tax Commission has the power (pursuant to 689(d)(1) of the Tax Law) to determine a greater deficiency than originally asserted against petitioners for 1967, 1968 and 1969, pursuant to the Notice of Deficiency dated May 22, 1972, and to determine additional assessments against petitioners for taxes and penalties as provided in section 685 of the Tax Law with respect to unincorporated business taxes and personal income taxes.

H. That in view of the exceptions stated in section 683 of the Tax Law, the claims asserted against petitioners for additional unincorporated business taxes and penalties and for additional personal income taxes for 1967, 1968 and 1969 are not barred by the Statute of Limitations.

I. That the petitions of Ronald A. Como and Siriwan K. Como are granted to the extent specified as follows:

(a) The deficiency for additional personal income and unincorporated business tax asserted against said petitioners for 1967, 1968 and 1969 is hereby modified to the extent of changing (with respect to those years only) the percentage allocations set forth in the Notice of Claim dated March 25,

1974 from 100% to 67.95% as to the "wage and salary percentage", and from 100% to 50% as to the "sales percentage."

(b) The Income Tax Bureau is hereby directed to modify said Notice of Claim dated March 25, 1974, in accordance with the foregoing paragraph.

J. That except as provided above, the petitions of Ronald A. Como and Siriwan K. Como are in all respects denied and that, except as modified, the Notice of Claim dated March 25, 1974 and the notices of deficiency dated April 12, 1974, with respect to additional personal income and unincorporated business taxes due, are hereby and in all respects sustained.

DATED: Albany, New York  
April 6, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER