

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Saul Rieger

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law :
for the Years 1971 - 1973. :

State of New York
County of Albany

Jay Vredenburg, 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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Saul Rieger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Saul Rieger
245 E. 19St.
New York, NY

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax & UBT :
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State of New York
County of Albany

Jay Vredenburg, 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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Jacob W. Friedman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

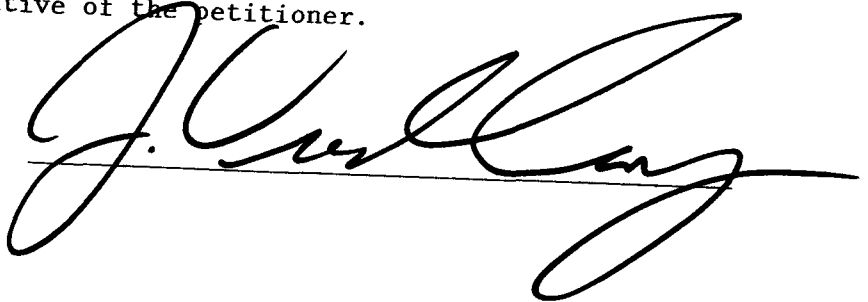
Mr. Jacob W. Friedman
111 Broadway
New York, NY 10006

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 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
21st day of March, 1980.

Joanne Knapp



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

March 21, 1980

Saul Rieger
245 E. 19St.
New York, NY

Dear Mr. Rieger:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jacob W. Friedman
111 Broadway
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| SAUL RIEGER | : | DECISION |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income and | : | |
| Unincorporated Business Taxes under | : | |
| Articles 22 and 23 of the Tax Law for | : | |
| the Years 1971 through 1973. | : | |

Petitioner, Saul Rieger, 245 East 19th Street, New York, New York 10003, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1971 through 1973 (File No. 18130).

A small claims 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 July 18, 1979 at 10:45 A.M. Petitioner appeared by Jacob Friedman, Esq. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the petitioner's activities as a management consultant during the years 1971 through 1973 constituted the practice of a profession.

II. Whether the petitioner's activities as a management consultant during the years 1971 through 1973 constituted services rendered as an employee.

FINDINGS OF FACT

1. Petitioner, Saul Rieger, and his wife filed New York State combined income tax returns for the years 1971 through 1973. He listed his occupation

as management consultant (1971), management consultant (1972), and consultant (1973). He did not file unincorporated business tax returns for any of said years at issue.

2. On January 24, 1977, the Audit Division issued a Statement of Audit Changes based on its determination that the "Business of management consultant is subject to New York State unincorporated business tax." Additionally, an adjustment was made to personal income tax for the taxable year 1972, but this adjustment was not contested by the petitioner. Accordingly, a Notice of Deficiency was issued against the petitioner under the same date asserting additional unincorporated business tax of \$1,952.49, additional personal income tax of \$163.57, plus interest of \$548.28, for a total due of \$2,664.34.

3. The income, which petitioner contended was exempt from the imposition of unincorporated business tax, was derived from services rendered to Luxuray Varynit, the Consumer Products Division of Beaunit Corporation, a fabric manufacturer, located at 261 Madison Avenue, New York City.

4. Petitioner's activities with said corporation consisted of supervising the manufacturing of fabrics with respect to the methods and machinery used. His services were rendered at his principal's place of business, his home, and three out-of-state plants, which he visited at his own discretion, not at the direction of Luxuray-Varynit (hereinafter "Luxuray").

5. Petitioner worked solely for Luxuray from April 1970 through 1978. An agreement between petitioner and Luxuray dated April 22, 1970 provided that:

During the term of this agreement, you shall not, without Beaunit's prior written consent, engage in or contribute your knowledge in management, marketing, commercial development, market research or applications research pertaining directly to the manufacture and sale of any product line with respect to which you perform services for Beaunit hereunder. Also,

In performing services hereunder, your status will be that of an independent contractor and not that of an employee or part-time employee, and you will not be entitled to any of the benefits available to employees of Beaunit.

6. Petitioner's income was reported on an information return rather than a wage and tax statement. He paid his own social security taxes and income taxes since Luxuray did not withhold taxes from his compensation.

7. No evidence was submitted to indicate the degree of direction and control exercised by Luxuray over the petitioner's activities.

8. Petitioner's Federal Schedule C for the year 1972 disclosed that his business address listed was that of his personal residence.

9. Petitioner testified that a portion of his claimed business expenses was incurred on his own behalf and not in connection with services rendered to Luxuray.

10. Petitioner claimed exemption from unincorporated business tax on the basis that his duties as a management consultant constituted the practice of the profession of engineering. He contended that he is a "registered professional engineer and holds five patents on sewing machines and adaptations of sewing equipment."

11. Petitioner's educational background consisted of attendance at Cornell University, where he majored in economics but did not graduate.

12. Prior to joining Luxuray, petitioner had accumulated approximately twenty years of experience in the needle trade business in an executive capacity with various corporations.

CONCLUSIONS OF LAW

A. That 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, that accordingly, the activities of the petitioner, Saul Rieger, did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That as evidenced by the agreement between petitioner, Saul Rieger, and Luxuray, the petitioner's relationship with his principal was that of an independent contractor; and that, accordingly, the petitioner was not an employee within the meaning and intent of section 703(b) of the Tax Law.

C. That the petition of Saul Rieger is denied and the Notice of Deficiency dated January 24, 1977 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

MAR 21 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER