

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82 (10) I
Income Tax
December 31, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I821027B

On October 27, 1982, a Petition for Advisory Opinion was received from Gordon C. Dixon, 142 West End Avenue, New York, New York 10023.

The issue raised is whether the activities of Petitioner as a consulting fund raiser during 1978, 1979 and 1980 constituted the practice of a profession for purposes of the Unincorporated Business Income Tax imposed under Article 23 of the Tax Law.

Petitioner during the years at issue was a consulting fund raiser. More than 80 per cent of Petitioner's income was derived from personal services and capital was not a material factor in producing such income.

Article 23 of the Tax Law imposes the State's Unincorporated Business Income Tax on the unincorporated business income of "every unincorporated business wholly or partly carried on within this state." Tax Law, §701(a). Section 703(c) of the Tax Law excludes from the category of "unincorporated business" the following: "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 , "

The Unincorporated Business Income Tax Regulations define the term "other profession" to include ". . . any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding or teaching them, and, in serving their interests or welfare in the practice of an art or science founded on it. The word profession implies attainments in professional knowledge as distinguished from mere skill and the application of knowledge to uses for others as a vocation. 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." 20 NYCRR § 203.11 (b) (1) (i).

TSB-A-82 (10) I
Income Tax
December 31, 1982

It has been held that to qualify for such "professional exemption", in accordance with the foregoing, the services performed must "encompass some of the essential characteristics" of the professions of law, medicine, dentistry or architecture. Matter of Koner v. Proaccino, 45 A.D. 2d 551, aff'd 39 NY 2d 258.

Accordingly, Petitioner's activities during the years in question did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law, and the income derived therefrom was subject to the unincorporated business income tax.

DATED: December 22, 1982

s/FRANK J. PUCCIA
Director
Technical Services Bureau