

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

TSB-A-81 (11) I
Income Tax
December 31, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1810617A

On June 17, 1981, a Petition for Advisory Opinion was received from Anita Summer, 619 Oakwood Court, Westbury, New York 11590.

The issue raised is whether Petitioner's income from activities as a newspaper columnist and free lance writer is subject to the unincorporated business income tax imposed under Article 23 of the Tax Law.

The tax in question is imposed on "the unincorporated business taxable income of every unincorporated business wholly or partly carried on within this state." Tax Law, §701(a). The term "unincorporated business" is defined in section 703 of the Tax Law, wherein it is provided that:

"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 on the members of the partnership or other entity, shall not be deemed an unincorporated business." Tax Law, §703(c).

The occupation of authorship has been consistently held to constitute the practice of a profession, within the meaning of Section 703(c) of the Tax Law, except to the extent that the writing in question takes the form of advertising copy or commercials, or material which promotes business or the sale of a product. Harry Hurwitz and Barbara Hurwitz, Decision of State Tax Commission, September 28, 1979, TSB-H-79(216)-I; Richard Cornuelle, Decision of State Tax Commission, September 29, 1977; Opinion of Counsel, January 12, 1967, NYTB 1967-1, p. 43; Opinion of Counsel, October 27, 1966, NYTB 1966-4, p. 52.

Accordingly, Petitioner's activities described above, assuming that capital is not a material income producing factor therein and that in excess of 80% of the income derived therefrom is derived from personal services rendered by Petitioner, constitute the practice of a profession within the meaning of Section 703(c) of the Tax Law. The income derived therefrom, pursuant to such statutory provision, is not subject to the unincorporated business income tax.

DATED: September 30, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau