

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Oleg & Maie Golubjatnikov :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Unincorporated Business Tax :  
under Article 23 of the Tax Law :  
for the Years 1971 - 1974. :

AFFIDAVIT OF MAILING

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Oleg & Maie Golubjatnikov, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Oleg & Maie Golubjatnikov  
4909 Long Acre Dr.  
Syracuse, NY 13215  
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  
20th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Oleg & Maie Golubjatnikov :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Unincorporated Business Tax :  
under Article 23 of the Tax Law :  
for the Years 1971 - 1974. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Victor Chini 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. Victor Chini  
811 State Tower Bldg.  
Syracuse, NY 13202

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  
20th day of June, 1980.

Joanna Krapp

J. Vredenburg

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

June 20, 1980

Oleg & Maie Golubjatnikov  
4909 Long Acre Dr.  
Syracuse, NY 13215

Dear Mr. & Mrs. Golubjatnikov:

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) 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  
Victor Chini  
811 State Tower Bldg.  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
OLEG and MAIE H. GOLUBJATNIKOV : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law for :  
the Years 1971, 1972, 1973 and 1974.

---

Petitioners, Oleg and Maie Golubjatnikov, 4909 Long Acre Drive, Syracuse, New York 13215, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1971, 1972, 1973 and 1974 (File Nos. 13792 and 17543).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on May 22, 1979 at 1:15 P.M. Petitioners appeared with Victor Chini, Esq. The Audit Division appeared by Peter Crotty, Esq. (Kathy Sanderson, Esq., of counsel).

ISSUES

I. Whether petitioner Oleg Golubjatnikov's income derived from his business activities is subject to unincorporated business tax.

II. Whether petitioner Oleg Golubjatnikov's activities constituted the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Oleg and Maie H. Golubjatnikov, filed joint New York State income tax resident returns for the years at issue.

2. Petitioner Oleg Golubjatnikov filed a New York State Unincorporated Business Tax Return for 1971 and reported \$286.43 of unincorporated business tax from his activities. On petitioners' 1972 New York State Income Tax Resident Return, they claimed credit for 1971 unincorporated business tax which they claimed was paid in error. Petitioner did not file unincorporated business tax returns for years other than for 1971.

3. On January 26, 1976, the Income Tax Bureau issued a Notice of Disallowance for \$286.43 disallowing the credit claimed for unincorporated business tax paid for 1971. On February 24, 1976, the Bureau issued a Notice of Deficiency for 1972 against petitioners, Oleg and Maie H. Golubjatnikov for unincorporated business tax and personal income tax for \$779.72 plus penalty (pursuant to section 685(a) (1) and (a) (2) of Tax Law) of \$160.52 and interest of \$86.16, less overpayment on return of \$378.43 for a total due of \$647.97. A second Notice of Deficiency was issued on December 20, 1976 for 1973 and 1974 against petitioners for unincorporated business tax of \$1,392.28, plus interest of \$231.70 for a total of \$1,623.98. Both of the above deficiencies asserted unincorporated business tax on the income Oleg Golubjatnikov derived from his activities as a consultant.

4. Although joint New York State income tax resident returns were filed for 1971, 1972, 1973 and 1974, petitioner Maie H. Golubjatnikov was a fulltime housewife and did not participate in petitioner Oleg Golubjatnikov's business activities.

5. Petitioner Oleg Golubjatnikov received a Bachelor of Science degree in electrical engineering and Master of Science degree in electrical engineering from the University of Illinois in 1952 and 1954 respectively.

6. Petitioner has been working in the field of electrical and electronic engineering and the nature of his activities can be described as an engineering practice requiring engineering education, training and experience and the

application of special knowledge of the mathematical, physical and engineering sciences to his specialty of computer design, data communications and data system architecture. This knowledge of engineering was applied to operational research, mathematical algorithms to describe scientific phenomena and conversion of algorithms to data processing requirements. This work was done on a contractual basis with a majority of the work having been done for General Electric Company.

7. Petitioner's duties on engineering projects included, but are not limited to, technology planning (i.e., research work on such as transistors and computers), product requirements analysis (i.e., what electronic component parts are needed to build system and product), application requirements analysis (i.e., how the electronic component parts will interrelate with each other and outside environment), system and product architectural design (i.e., how the electronic component parts are to be arranged and placed) and specification (i.e., what tolerances electronic component parts and finish products are to have) for the development and application of advance computer and data processing products for systems such as sonar, radar and weapon systems. This work is done by the petitioner before the actual data processing system (equipment) is built and is called the software portion of the computer or data processing system. Petitioner is also involved in the actual building and testing of the product so that the product will meet engineering analysis and design requirements that he has specified.

8. The activities of petitioner were not in the nature of selling a product or service nor did petitioner undertake to advise management as to management's business or industrial affairs.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner Oleg Golubjatnikov constituted the practice of electrical and electronic engineering, which is exempt from unincorporated business tax in accordance with section 703(c) of the Tax Law and 20 NYCRR 203.11 (b) (1) (ii) (f).

B. That the petitions of Oleg and Maie H. Golubjatnikov are granted and the notices of deficiency issued February 24, 1976 and December 20, 1976 are cancelled. The Audit Division is hereby directed to refund the sum of \$286.43, together with such interest as may be lawfully owing.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER