

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY DIAMONDSSTEIN

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the (Year(s) 1962 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

LYNN HORODOWICH, 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 28th day of October, 1969, she served the within Notice of Decision (~~or Determination~~) by (certified) mail upon Murray and Helen Diamondstein (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Murray Diamondstein, 1990 Stratford Drive Westbury New York 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~ of) 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

5th day of November, 1969.

Grace E. Brichard

Lynn Horodowich

To, Mr. Rook

To be submitted to Commission, upon
your approval.

October 1, 1969

NGW:jw

*(Murray &
Helen G. Diamondstein)*

OK
HW
From Nigel G. Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY AND HELEN E. DIAMONDSTEIN

DECISION

For a redetermination of a deficiency or
for refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Year 1962

The taxpayer having filed a petition pursuant to Section 722 and 689 of the Tax Law for a redetermination of a deficiency dated October 11, 1965 of unincorporated business taxes imposed by Article 23 of the Tax Law for the year 1962, and a hearing having been duly held before Nigel G. Wright, hearing officer, and the record having been duly examined and considered,

The STATE TAX COMMISSION hereby

FINDS:

(1) The sole issue in this case is whether or not the taxpayer Murray E. Diamondstein is exempt during 1963 from the unincorporated business tax by reason of his being a professional person within the meaning of Tax Law Sec. 703(c). The computation of the tax otherwise due in the amount of \$170.67 is conceded to be accurate.

(2) Taxpayer was not licensed under Article 145 of the Education Law as a professional engineer during the taxable year in question. Only after such taxable year did the taxpayer secure such license. During the taxable year in question the taxpayer qualified under Education Law Sec. 7205(1)(e) for such license except that he had not taken the exams.

(3) Taxpayer received a Bachelors Degree in Sciences from the City College of New York in 1941. He served four years with the US Army Corps of Engineers and for more than two years was an engineering officer in charge of an Engineering Utility Company.

(4) From 1945 to 1960 taxpayer was an employee and supervisor of a business firm contracting for the installation of heating and air conditioning apparatus.

(5) From 1961 through 1965 the taxpayer was an independent contractor, on an agreed fee for basis, for Herman Scherr, Associates, Consulting Engineers. Taxpayer's office was in his own home. Taxpayer was responsible for the design, planning and final approval of heating and air conditioning work. Mr. Scherr would certify such work when such certification was required. In all respects, except as to certification, the taxpayer used a professed knowledge of engineering in his work.

(6) The taxpayer's work during the taxable year is the same as his work in later years after he secured a professional license.

(7) Helen E. Diamondstein was in no way involved during the taxable year in the business activities of Murray Diamondstein.

Upon the foregoing findings and all the evidence presented herein, the STATE TAX COMMISSION hereby

DECIDES:

(A) That the practice of professional engineering by a person not duly licensed is unlawful (Education Law Sec. 7202(1)).

(B) That the practice of a profession within the meaning of Tax Law Sec. 703(c) is restricted to the lawful practice of a profession.

(C) The taxpayer Murray Diamondstein was carrying on an unincorporated business during the taxable year. The taxpayer Helen E. Diamondstein was not carrying on such a business.

(D) The petition of Helen E. Diamondstein is granted and the deficiency as to her is cancelled in full.

(E) The petition of Murray Diamondstein is denied and the deficiency in tax due of \$170.62 is affirmed together with such

interest, if any, as may be due under Section 684 of the Tax Law.

Dated: Albany, New York this 27th day of October 1969 .

STATE TAX COMMISSION

Norman Gellman
COMMISSIONER

Bruce Hanley
COMMISSIONER

Milton Koenig
COMMISSIONER