

STATE OF NEW YORK  
STATE TAX COMMISSION

Frei  
UBT-1970

In the Matter of the Petition

of  
GEORGE FREI

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

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article(x) 23 of the  
Tax Law for the Year(s) 1961 and 1962

State of New York  
County of Albany

Patricia Conley, 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 3rd day of February, 1970, she served the within  
Notice of Decision~~(or Determination)~~ by (certified) mail upon Mr. George Frei

(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. George Frei, 19 Windermere, Rockville  
Centre, 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

4th day of February, 1970

Edward Rock

Patricia Conley

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
GEORGE FREI

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

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) 1961 and 1962:

State of New York  
County of Albany

Patricia Conley, 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 3rd day of February, 1970, she served the within  
Notice of Decision (~~or Determination~~) by (certified) mail upon Leon I. Lipner, CPA

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Leon I. Lipner, CPA, 141 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 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

4th day of February, 1970

Edward R. [Signature]

Patricia Conley

*Leans Pub*

*CCH 77-249*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GEORGE FREI	:	DECISION
For a Redetermination of a deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the years 1961 and	:	
1962	:	
	:	

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The taxpayer having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency, or for refund, of unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1961 and 1962, and a hearing thereon having been held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered, the STATE TAX COMMISSION hereby,

FINDS:

(1) The principle issue in this case is whether petitioner's activities constituted the practice of a profession within the meaning of Tax Law Section 703(c) so as to be excluded from the unincorporated business tax. The amounts of the deficiency in tax otherwise due of \$1096.95 for 1961 and \$489.20 for 1962 is conceded to be correct. A secondary issue is the assessment of a penalty of \$274.24 for the year 1961.

(2) The taxpayer's activities have been described as industrial design or architectural design.

(3) The taxpayer maintained an office at 110 East 30 Street, Manhattan.

(4) Capital is not a material income producing factor of the taxpayer's business activity.

(5) Mr. Frei employed assistants, whose work was under his supervision and which was subject to Mr. Frei's final approval before being released to clients.

(6) The taxpayer secured his own clients through a reputation acquired by his former association with a business consulting firm. In addition, he did work for Mr. Raymond Lowey on Mr. Lowey's accounts.

(7) The taxpayer attended New York University School of Architecture and the Ecole de Beaux Artx in Paris in the 1930's but never graduated.

(8) In 1939 and 1940 he was an instructor at N.Y.U. teaching industrial design. He has been a "juror" on student work at Pratt Institute and is now listed as a "juror" of the National Institute for Architectual Education. He is a member of the American Institute of Architects. He is not a member of the American Society of Industrial Designers.

(9) The taxpayer was employed from 1943 to 1960 by Amos Parrish & Co., and became Vice President in charge of the "Store Design Division, Retail Buildings and Interiors." The taxpayer after the taxable year in question was employed by Raymond Lowey William Snaith Co., as Director of Retail Store Planning.

(10) Mr. Frei is not licensed as an architect.

(11) Mr. Frei's work is a unique field and there is no license which would certify qualification in this field.

(12) Mr. Frei's work is almost wholly the design of the interiors of retail stores. This includes floor layout, design of display cabinets and interior decoration and includes the planning of executive and storage space as well as the main selling area. He also advises on what departments are suitable for the store and on best location for a store based upon traffic studies and other factors.

(13) Mr. Frei uses in his work ; traffic studies, formulas of retail trade groups, and "figures of performance" for department stores. His objective is to produce a high volume of sales for the store.

(14) The taxpayer failed to file a return because of reliance on an advisor of unquestioned competence.

Upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

DECIDES:


A. The taxpayer's activities are predominately directed toward advising business firms on the conduct of business with a view toward greater profits. Activities as a retail store consultant are not activities in a "field of science or learning gained by a prolonged course of specialized instruction and study." This taxpayer acquired his competence as a result of business experience and not, primarily, through academic work. Taxpayer has not sustained the burden of proof that he is a professional.

B. The failure to file a return was due to reasonable cause and not willful neglect; the deficiency for 1961 is redetermined to cancel the penalty included therein.

C. The notice of deficiency for each of the years 1961 and 1962 in the amounts of \$1096.95 and \$489.20 are affirmed together with such interest, if any as may be due pursuant to Tax Law Section 684.

Dated: January 23, 1970, Albany, New York

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER