

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER & MADELINE
SMACHLO

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:

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

Deerbach
cch
99-259

State of New York
County of Albany

Lynn Puerto, 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 26th day of March, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Walter and

Madeline Smachlo (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Walter and Madeline Smachlo
R.F.D. #1
Vishers Ferry, 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

26th day of March, 1970

James Angel

Lynn Puerto

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Walter and Madeline Smachlo

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

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of March, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Walter &

Madeline Smachlo (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Sidney Handman
25 West 43rd Street
New York, 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

26th day of March, 1970

Janet Wright

Lynn Puerto

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WALTER and MADELINE SMACHLO	:	
For a Redetermination of a Deficiency	:	DECISION
or for Refund of Unincorporated Busi-	:	
ness Tax under Article 23 of the Tax	:	
Law for the Years 1961 and 1962	:	

The taxpayers having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency dated March 14, 1966, of unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1961 and 1962 and a hearing 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 sole issue in this case is whether Walter Smachlo, an engineer, but without a license, is exempt from the unincorporated business tax by reason of being a professional within the intent of the Law.

(2) The deficiencies herein are in the amounts of \$701.24 for 1961 and \$1674.43 for 1962 both with interest.

(3) Madeline Smachlo is in no way involved in the income-producing activities of her husband.

(4) Mr. Smachlo is not licensed in New York State as a professional engineer.

(5) Mr. Smachlo has a Mechanical Engineering degree from Mississippi State College. He is a licensed professional engineer in the State of Mississippi. He served in the Army for six years during which he received academic training in electrical engineering

Is the holder of the license

...

...

For a certificate of a license
of the State of Texas
...

The license holder filed a petition pursuant to section 282
and of the law for a restoration of a certificate, dated
March 1, 1951, of which the license holder was the holder of
Article 23 of the law for the years 1951 and 1952 and a license
having been held since March 1, 1951, pursuant to which, and the
record having been duly examined and considered,

The State Bar Commission hereby

...

(1) The sole issue in this case is whether the license
is valid, and without a license, it cannot be used to conduct
business in the state of Texas or to conduct business
of the law.

(2) The defendant herein and the amount of \$500.00 for

1951 to 1952, for 1951 and 1952, and 1952.

(3) The license holder is to be involved in the license

proceeding activities of the license.

(4) The license holder is to be involved in the license

proceeding activities of the license.

(5) The license holder is to be involved in the license

proceeding activities of the license. It is a licensed professional engineer

in the State of Texas. He is involved in the license

proceeding activities of the license. It is a licensed professional engineer

at Princeton University, worked in the radiation laboratory under Dr. Robert Oppenhermer and then did radar development work at Langley Airfield. He has a Masters degree in Business Administration from Harvard University and while there specialized in manufacturing under General George Dorit, the president of American Research and Development Company of Boston.

(6) Immediately after college, Mr. Smachlo worked for Higgens Shipyards in New Orleans and did the drafting, surveying, and mathematics necessary for the construction of Liberty Ships. Mr. Smachlo was for a time employed by General Electric Co., first at Boston, Massachusetts, then at Schenectady, New York, where he worked on jet engines. Mr. Smachlo then worked in Puerto Rico, Santo Domingo, and Mexico designing and erecting bulk sugarmills. He worked as a consulting engineer for different firms including Arthur D. Little of Boston. He started his own business in Connecticut as "United Engineering Service". All of this training and experience was prior to the tax years in question.

(7) Mr. Smachlo moved to New York State in November 1957.

(8) Mr. Smachlo obtained his clients primarily by referral from his principal client - General Electric Company. His clients are mainly suppliers of General Electric Company.

(9) One principal client is Bethlehem Corporation. Bethlehem Corporation heeded the taxpayer's advice that certain castings worth \$100,000 were defective beyond repair and had to be scrapped.

(10) Mr. Smachlo's expert knowledge is primarily in the fields of metallurgy and metal castings. He makes use of the following areas of specialized academic knowledge: chemistry, stress analysis, mathematics through differential and exponential equations and mechanical design. His work is of the highest caliber and includes patentable products.

at Princeton University, worked in the Radiation Laboratory under

Dr. Robert Serber, and then did his postdoctoral work at

Princeton University. He has a research paper in Nuclear Engineering

also from Harvard University and while there specialized in

mathematics under General George Borge. The research in nuclear

research and development and history of science.

(6) Immediately after college, Dr. Serber worked for General

Electricity in New York and did the research, engineering, and

mathematical research for the construction of atomic bombs. Dr.

Serber was for a time employed by General Electric Co. While at

Princeton, Serber, then at Princeton, New York, then at

worked on jet engines and other things in various places.

General Serber, and Serber's research and engineering work included

the design of a rocket engine for the Navy's first rocket

Arthur T. Serber of Princeton. He started his own business in

connection with "United Engineering Services". All of this business

and research was done in the New York area in 1945.

(7) Dr. Serber moved to New York State in November 1945.

(8) Dr. Serber obtained his doctorate primarily by research

from his principal client - General Electric Company. His clients

are mainly clients of General Electric Company.

(9) The principal client is General Electric Corporation. Serber

Corporation headed the research which that certain engineering

work 800,000 were devoted beyond research and had to be returned.

(10) Dr. Serber's research was primarily in the design

of machinery and metal castings. He later was in the following

years of specialized research in: chemistry, physics, biology,

and chemical physics, theoretical and experimental physics and

mechanical design. His work is of the high caliber and includes

various projects.

(11) Every company Mr. Smachlo works for has a licensed, professional engineer on its payroll. Either Mr. Smachlo's client or the client's customer - usually General Electric Co. - takes full ultimate responsibility for the end product in which Mr. Smachlo's work is incorporated.

(12) Mr. Smachlo did no work as a salesman. He did no work in consulting others on sales except as an essential and normal part of the engineering design of products. He receives no commission on goods sold and is not a sales engineer. Mr. Smachlo does not work in business finance, business management, or in cost control except as these are essential to the application of his engineering knowledge.

(13) Mr. Smachlo maintained an office in his home at Vischer's Ferry, New York. He had a professional card. He used a letterhead bearing the title "Management Consulting Engineer".

(14) The taxpayer has not secured or submitted a ruling from the Department of Education of the State of New York that his activities in the engineering field are not in violation of the law prohibiting the practice of engineering without a license.

(15) Mr. Smachlo performs the services of consultation, investigation, evaluation, planning and design, in connection with machines, equipment, and processes. These services are concerned with or involve the safeguarding at least of property, if not of life and health. Furthermore, these services require the application of engineering principles and data.

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission hereby

DECIDES:

(A) The taxpayer's activities either do not constitute the practice of the profession of engineering or else are in violation

(1) Very serious. The British worker has a license.

Professional engineer on his own. He is a British citizen.

He is a British citizen - British Council License No. - 1000

Full of British responsibility for the and worked in with it.

Specific work is mentioned.

(2) The British worker has a license. He did not work.

In connection with the work as an engineer and engineer.

Part of the engineering design of products. He receives no

compensation for work and is not a paid engineer. He is a

British citizen and an engineer. Business agreement, on the

part of the work is essential to the position of his

company in the field.

(3) The British worker has a license in his home at the

factory, London. He has a professional card. He used a license

because of the little management of the company.

(4) The worker has not received an official license from

the Department of Education of the State of New York and his

activities in the engineering field are not in violation of the

law. The worker is the holder of a license without a license.

(5) The worker receives the services of consultation.

Investigation, evaluation, planning and design, in connection with

machines, equipment, and processes. These services are provided

when he receives the satisfaction of his work. It is not of

the nature of a contract. Furthermore, these services require the application

of engineering principles and data.

Under the proposed license and all the evidence in the case.

The State Tax Commission hereby

ORDER

(6) The worker's work is not in violation of the law.

Specific. It is a violation of the law or else it is in violation

of the law prohibiting the practice of engineering without a license. The practice of the profession of engineering lawfully, but without a license, is not recognized by the State Tax Commission.

(B) The exemption from the unincorporated business tax for professionals applies only to those who are engaged in a lawful profession. Illegal activities are not recognized as exempt.

(C) Mr. Smachlo is not exempt from the unincorporated business tax.

(D) Mrs. Madeline Smachlo is not liable for her husband's unincorporated business tax.

(E) The deficiencies, as set forth in paragraph two, are cancelled as to Madeline Smachlo but are affirmed as to Walter Smachlo, together with such interest, if any, as may be lawfully due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York

March 24, 1970.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce McSweeney
COMMISSIONER

Walter Kerner
COMMISSIONER

of the law prohibiting the practice of engineering without a license. The practice of the profession of engineering is a public interest. It is not recognized by the State for the purpose of the law.

(4) The corporation has the same legal status as an individual.

Professional services only to those who are engaged in a lawful occupation. If a person is not engaged in a lawful occupation, he is not entitled to the same treatment as a professional.

(5) No. 1000 is not exempt from the anti-trust laws.

(6) No. 1000 is not exempt from the anti-trust laws.

incorporated business.

(7) The corporation is not exempt from the anti-trust laws.

concerned in the practice of engineering and the law.

Corporation, together with each individual, is an entity in itself.

the government to protect the public interest.

NOTE: All the above are for the purpose of the law.

WILLIAM H. HARRIS
ATTORNEY AT LAW

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