

TAX UBTART. 23 SECS. 122

KEY WORDS _____

CROSS REFS. _____

CASE LAW CITATIONS _____

REMARKS _____

DECISION

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 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

at Princeton University, worked in the radiation laboratory under Dr. Robert Oppenheimer 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 Higgs 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.

(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

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 21, 1970.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Barbara Neaseley
COMMISSIONER

Walter Krinner
COMMISSIONER