

STATE OF NEW YORK
STATE TAX COMMISSION

Keyes. Assoc.
U. B. T. 23

In the Matter of the Petition

of

Robert A. Keyes Associates

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)) 1960, 1961, 1962 & 1963

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

State of New York
County of Albany

Martha Funaro, 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 5th day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert A.

Keyes Associates (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Gerald Dickler
122 East 42nd Street
New York, New York 10017

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 January, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Robert A. Keyes Associates

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) 1960, 1961, 1962 & 1963

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

State of New York
County of Albany

Martha Funaro, 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 5th day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert A.

Keyes, Associates (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Robert A. Keyes Associates
821 Franklin Avenue
Garden City, 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 January, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT A. KEYES ASSOCIATES	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the years 1960, 1961,	:	
1962 and 1963	:	

Petitioner, Robert A. Keyes Associates, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961, 1962 and 1963. (File # 2438) A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, City of New York on March 10, 1970 at 11:00 A.M. Petitioner appeared by Gerald Dicker, Esq. and the Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, esq., of counsel).

FINDINGS OF FACT

1. Petitioner filed New York State partnership returns for the years 1960 through 1963. It did not report any unincorporated business tax on these partnership returns.

2. On February 28, 1966 the Income Tax Bureau issued a statement of audit changes against petitioner imposing unincorporated business tax upon the income reported by it during the years 1960 through 1963 upon the grounds that there was no professional exemption allowed for automotive and electrical engineers and that all partners were not exempt for professional reasons and that therefore its activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a notice of deficiency therefor in the sum of \$4,943.87.

3. Petitioner considered itself to be a professional partnership at the time of the filing of the partnership returns. However, at the formal hearing it conceded that it was subject to unincorporated business tax, but claimed that a portion of its income should be allocated since it maintained a place of business outside of New York State.

4. Petitioner, a New York partnership, conducted a business in the nature of industrial engineering during the years 1960 through 1963; its principal office was located in Garden City, New York. It also maintained an office in Detroit, Michigan. Its name appeared on the Detroit Building directory and on the office door. Its name was listed in the Detroit telephone book. Its stationery contained the Detroit and Garden City addresses. The office was opened principally to accommodate a British client in the automotive field who had business dealings with U. S. automobile manufacturers. One of the partners spent a part of his time working out of the Detroit office.

5. The lease for the Detroit office was in the name of a Mr. Schweppe who paid the Detroit office rent and expenses including secretarial expenses. He was a business associate of the partnership who worked on partnership business as an independent agent. He only worked in Detroit. He was paid monthly on the basis of billable hours spent on project work and at the end of the year was paid a bonus on the profit made. The payments to him were deducted by the partnership on its income tax returns under "Professional Services". Clients were billed and Mr. Schweppe was paid from the Garden City office.

6. The receipts of the partnership were based upon the hours billed to the clients. In 1960, 1773 hours out of 7190 billable hours; in 1961, 1025 1/2 out of 4266 billable hours; in 1962, 846 out of 3074 billable hours and in 1963, 1222 1/2 hours out of 4814 billable hours were for work performed in the Detroit office.

7. The business income of the partnership for 1960 was \$37,028.82; for 1961 was \$26,129.99; for 1962 was \$32,854.27 and for 1963 was \$35,419.03.

8. The business income attributable to the work performed in Detroit was \$9,072.06 in 1960; \$6,271.19 in 1961; \$7,392.21 in 1962 and \$8,854.76 in 1963.

CONCLUSIONS OF LAW

A. That the business activities of petitioner during the years 1960 through 1963 did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of Section 703(c) of the Tax Law.

B. That petitioner, maintained regular places of business within and without the State of New York.

C. That attributing 75 1/2% of net income in 1960, 74% of net income in 1961, 77 1/2% net income in 1962 and 75% of net income in 1963 to business carried on within the State of New York was a fair and equitable allocation of income subject to unincorporated business tax in accordance with the meaning and intent of Section 707(a) of the Tax Law.

D. That the failure of petitioner to file unincorporated business tax returns for the years 1960 through 1963 was for reasonable cause in accordance with the meaning and intent of Section 685(a) of the Tax Law.

F. That the petition of Robert A. Keyes Associates is granted to the extent of reducing its taxable business income for unincorporated business purposes for the year 1960 from \$37,028.82 to \$27,956.76; for the year 1961 from \$26,129.99 to \$19,858.80; for the year 1962 from \$32,854.27 to \$25,462.06 and for the year 1963 from \$35,419.03 to \$26,564.27 and reducing the unincorporated business tax due for the year 1960 from \$984.92 to \$694.60, for the

- 4 -

year 1961 from \$636.15 to \$435.48, for the year 1962 from \$851.34 to \$614.80 and for the year 1963 from \$933.91 to \$650.04 and cancelling the 25% penalty imposed pursuant to Section 685(a) of the Tax Law and the notice of deficiency issued February 28, 1966 is reduced to \$2,394.92 together with such interest as may be lawfully due.

DATED: Albany, New York
December 31, 1970

STATE TAX COMMISSION

Norman Holleran

COMMISSIONER

COMMISSIONER

Mittie Kremer

COMMISSIONER