Schimmel, Herbert
U.B.T.
16-A

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Herbert Schimmel

For a Redetermination of a Deficiency or a Refund of Unincorporated Business Taxes under Article(s) 16-A of the Tax Law for the (Year(s) 1959

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 13th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Herbert Schimmel (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Herbert Schimmel
166-40 Powells Cove Road
Flushing, 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
13th day of January, 1971

Martha Funaro

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application of HERBERT SCHIMMEL for Revision or Refund of Unincorporated Business Taxes under Article 16-A of the Tax Law for the Year 1959	DETERMINATION

Applicant, Herbert Schimmel, has filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1959 (file numbers B842530 and AB026989). A formal hearing was held before Vincent P. Molineaux, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 30, 1965, at 9:00 a.m. Applicant Herbert Schimmel appeared in person.

FINDINGS OF FACT

1. Applicant, Herbert Schimmel, and his wife filed a New York State Income Tax Resident Return for the year 1959. He did not file an Unincorporated Business Tax Return for the year 1959.

2. On March 14, 1961, the Income Tax Bureau issued a notice of additional assessment against applicant, Herbert Schimmel, imposing unincorporated business taxes upon the income received by him from his business activities during the year 1959, upon the ground that those activities constituted the carrying on of an unincorporated business in accordance with the provisions of Section 386 of the Tax Law and assessed unincorporated business taxes of $130.62, a penalty of $6.53 and interest of $7.18 making a total amount due of $144.33. On October 19, 1962, the Income Tax Bureau issued a further notice of assessment against him assessing additional income tax on the basis of the audit of his Federal Return in the sum of $98.66 and additional unincorporated business taxes thereon in the

sum of $53.55 making a total additional amount of $152.21. He is not contesting the assessment of additional income taxes based upon the audit of his Federal Return.

3. Applicant, Herbert Schimmel, received a B.A., M.S. and Ph.D. in mathematics and physics from the University of Pennsylvania. He also did graduate work in the field of economics. He was not a licensed professional engineer. On his 1959 Income Tax Return he lists his occupation as business consultant.

4. All of applicant, Herbert Schimmel's, income was derived from personal services rendered by him, and capital was not a material income-producing factor.

5. Applicant, Herbert Schimmel, received business income from four firms during the year 1959. He received a fee of $750.00 from Morris Cohon, a Wall Street investment firm, for an opinion as to whether a certain machine owned by a company it had invested in would theoretically work. He received a fee of $7,600.00 from Techniflex for working on the development of a system to transmit data over a data-phone. He received $6,000.00 from Nulife Products, a corporation owned by his father. He received this in the form of a fee of $500.00 a month for helping his father run the business. He received $1460.00 from Dibrell & Co. for helping the company attempt to sell a machine that would take the place of pesticides in killing insects.

CONCLUSIONS OF LAW

A. That applicant, Herbert Schimmel, was a professional physicist and mathematician within the meaning and intent of Section 703(c) of the Tax Law.

B. That with reference to the income received from Morris Cohon and Techniflex totalling $8,350.00, applicant, Herbert Schimmel's professional education, training and skill as a physicist and mathematician were essential to produce said income or was so material to its production so that without them he could not have obtained these fees under normal conditions of business and competition.

C. That with reference to the income received from Nulife Products and Dibrell & Co. totalling $7,460.00, applicant, Herbert Schimmel's, professional education, training and skill as a physicist and mathematician were not essential to produce said income or was not so material to its production so that without them he could have obtained these fees under normal conditions of business and competition.

D. That after the allowance of the salary credit and the statutory exemption, no unincorporated business tax was due on that portion of applicant, Herbert Schimmel's, income in the year 1959 subject to imposition of unincorporated business tax.

E. That the application of Herbert Schimmel for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1959 is granted, and the notice of assessment dated March 14, 1961, imposing unincorporated business taxes for the year 1959 and that portion of the notice of assessment dated October 19, 1962, imposing additional unincorporated business taxes for the year 1959 are cancelled.

DATED: Albany, New York
January 11, 1971

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

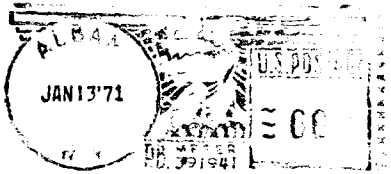
Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER

AD 32 (9-70) 50M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12226

Report
CIGARETTE
BOOTLEGGING
TELE. 212 267 1617
CANAL P.O. BOX 458
NEW YORK, N.Y. 10013



C A

Moved, left no address
No such number
Moved, not forwardable
Addressee unknown

Herbert Schimmel

166-40 Powells Cove Road

Flushing, New York

[redacted] 5723

Paul B. Coburn

FLUSHING
N. Y.
1971

Schimmel, Herbert
UBT
Art. 16-A.

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

January 13, 1971

Herbert Schimmel
166-40 Powells Cove Road
Flushing, New York

Please take notice of the Determination of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section 386j the Tax Law any proceeding in court to review an adverse decision must be commenced within 90 Days after the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

AD-1.12 (7/70)

STATE OF NEW YORK

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