

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS JACKS, RAY C. VALLELY & FRANK V. ASARO,
individually and as co-partners, d/b/u the firm
name and style of MORRIS JACKS
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

State of New York
County of Albany

Lynn Wilson, 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 29th day of August, 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon MORRIS JACKS
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Morris Jacks
Four Horizon Road
Fort Lee, New Jersey 07024
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

29th day of August, 19 72

Maitha F. Fraw

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS JACKS, RAY C. VALLELY & FRANK V. ASARO,
individually and as co-partners, d/b/u the firm
name and style of MORRIS JACKS
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

State of New York
County of Albany

Lynn Wilson, 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 29th day of August, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALEXANDER KATZ,
P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Alexander Katz, P.A.
516 Fifth Avenue
New York, New York 10036
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

29th day of August, 1972.

Matthia Fumano

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 29, 1972

Morris Jacks
Four Horizon Road
Fort Lee, New Jersey 07024

Gentlemen:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MORRIS JACKS, RAY C. VALLELY & FRANK V. ASARO, individually and as co-partners, d/b/u the firm name and style of	:	DECISION
MORRIS JACKS	:	
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.	:	

Morris Jacks filed a petition under sections 722 and 689 of the Tax Law for a redetermination of a deficiency in unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1961 and 1962. A hearing was held on July 28, 1971 at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. Alexander Katz, P.A., appeared for the petitioner. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the petitioner was practicing a profession so as to be exempt from unincorporated business taxes.

FINDINGS OF FACT

1. Morris Jacks is licensed as a professional engineer in the State of New York. The bulk of his income was from appraisals of improvements on real estate. He also supervised construction, filed plans and made inspections. Mr. Vallely and Mr. Asaro were not

engineers and apparently were much younger than Mr. Jacks and without significant business experience.

2. On January 2, 1960, Morris Jacks, Frank Asaro, Howard Beach and Raymond Vallely signed a written agreement that they should share office space, the last three paying Mr. Jacks a monthly rental, and that each would engage in his own separate occupation but that "if and in the event all the individuals hereto so desire, a partnership agreement shall be formed on the first day of January, 1961 under terms and conditions mutually agreeable to all the parties hereto".

3. On January 1, 1961, Morris Jacks formed a copartnership with Raymond Vallely and Frank Asaro. A certificate of partnership was filed with the New York County Clerk but no copy of such has been submitted in evidence. The partnership agreement, if any existed, has not been submitted in evidence.

4. Partnership returns (IT-204) were filed for 1961 and 1962 in the name of "Morris Jacks, joint venture" and "the firm of Morris Jacks", describing the kind of business as "professional engineers" and "engineers". No unincorporated business tax was declared or paid for said years. The 1962 return was signed "Morris Jacks, partner". Both returns show depreciation on office equipment and the expenses of running an office. They show no income, expense or depreciation with respect to real estate.

5. Mr. Jacks admits that Mr. Vallely and Mr. Asaro did some work for him in gathering information for appraisals. They received remuneration for this work.

6. Mr. Jacks has submitted no substantial contemporaneous evidence as to the truth of his assertions that Mr. Vallely and Mr. Asaro were mere employees of Mr. Jacks in his professional

office and that the partnership formed with them was limited to the single purpose of investment in real estate.

7. The deficiency in issue is dated February 8, 1965, and is in the amount of \$2,880.39 plus \$398.81 interest.

CONCLUSIONS OF LAW

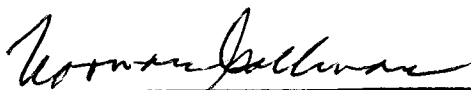
The petitioner firm is a partnership. The partnership is composed in part of nonprofessionals. Such a partnership cannot avail itself of the professional exemption (see petition of Karl W. Weisenbacher and Associates, April 8, 1969, CCH NY State Tax Rep. ¶99-205; petition of W.C. Gelman and Company, May 25, 1970, CCH N.Y. State Tax Rep. ¶99-282; petition of Licari, December 31, 1970, CCH N.Y. State Tax Rep. ¶99-314; petition of V.L. Falotico & Associates, December 11, 1970, CCH N.Y. State Tax Rep. ¶99-336).

DECISION

The petition is denied and the deficiency is found correct and due together with such further interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
August 29, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER