

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KURT ENSLEIN

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) 1965, 1966 & :
1967.

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 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon KURT ENSLEIN

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

Mr. Kurt Enslein
96 Greenaway Road
Rochester, New York 14610

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

7th day of February, 1974

Joyce S. L. Patterson

Martha Funaro



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino
~~XXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 7, 1974

Mr. Kurt Enslein
96 Greenaway Road
Rochester, New York 14610

Dear Mr. Enslein:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KURT ENSLEIN	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Kurt Enslein petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on November 9, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer appeared personally and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the petitioner's activities in the biomedical field together with work in computer science and the application of mathematical methods to medicine, subject to unincorporated business tax during the years in issue?

FINDINGS OF FACT

1. Petitioner, Kurt Enslein, timely filed New York State income tax returns for the years 1965, 1966 and 1967.

2. A Notice of Determination of deficiencies in income taxes for the years in issue was issued on December 29, 1969, against Kurt Enslein under File No. 76840030.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. Petitioner's education is extensive. Petitioner was born in France and received his early education there. He received a degree in electrical engineering in 1941 at Nimes, France, and came to the United States at that time. Additionally, the petitioner took courses at New York University, the University of Indiana, the University of Chicago and the University of Rochester. While petitioner's education has not resulted in advanced degrees, petitioner, over the years, has taken a great many courses at numerous institutions of higher learning in a great variety of topics including chemistry, advanced mathematics, optics, computer programming and biomedical engineering. During a period of employment in research and teaching by the Physics Department of the University of Rochester (1951-1957), petitioner lectured and taught graduate courses in electronic circuit analysis and digital computer circuit analysis. During that same period he served on Ph. D. graduate examination committees in the University of Rochester Physics Department in view of his expertise in electronic engineering and mathematics.

Petitioner has reading and writing fluency in several foreign languages (German and French) and reading fluency in several other foreign languages (Spanish, Hebrew, Dutch) and routinely uses these languages in the pursuit of his professional activities, particularly in reading scientific articles published in these languages.

5. Petitioner during the years in question, actively practiced his calling rather than consulting or acting in a management capacity. His activities included research in and writing about statistical, mathematical computer programs to analyze the effects of drugs on

humans; design and supervision of construction of a device connected with a computer to check components for a Xerox Corporation machine; the devising and computer programming of a pattern recognition system based on a mathematical method (for the National Institutes of Health, Washington, D.C.); the design and use of mathematical techniques to derive pulmonary blood volume data from human patients, the design and use of mathematical statistics computer programs in the analysis of medical data; the evaluation of needs for digital computers and personnel in several European countries (for the United Nations Development Program); the development of a mathematical method for the classification of chromosomes and the diagnosis of gynecological diseases. Petitioner received his income by contracts with, or grants from the corporations or health institutions involved in these fields. In many of these activities, petitioner worked in cooperation with medical doctors. The doctors obtained the data to be analyzed or otherwise used from their patients, and petitioner would devise a method of analyzing and would then analyze the data to derive the information desired. The goals of these projects were usually developed cooperatively between petitioner and the medical personnel. In addition to medical doctors, the petitioner worked with biophysicists, university teachers and other professionals. These projects as well as others carried on over the years by petitioner have resulted in the publication of approximately 50 articles in recognized scientific and professional publications.

6. The fields of biomedical engineering and computer science and the application of mathematical methods to medicine had their genesis during the years of practice of petitioner. When petitioner

started to work in these fields, no formal courses of study existed in the fields in question. (Petitioner's computer science activities started approximately in 1956; biomedical engineering activities started in 1960.) At the present time, graduate degrees in these fields are granted by a number of institutions (for example, the University of Rochester, University of Wisconsin, University of Pennsylvania, Northwestern University, etc.).

Petitioner thus was an early worker in the fields concerned, and also served in developing these fields. He organized the Rochester, New York Chapter of the Professional Group on Biomedical Engineering of the Institute of Electrical and Electronic Engineers. He is now a recognized authority in the fields of biomedical engineering, computer science, and multi-variate statistical analysis. This is evidenced by a number of events. For example, petitioner was recently invited to become a candidate for the presidency of the Rochester Section of Sigma Xi, an honorary research society. Petitioner is presently Senior Editor of a book to be published by John Wiley & Sons on Statistical Methods for Computers. Petitioner has been the editor of five published volumes dealing with the Proceedings of the Rochester Conferences, entitled "Data Acquisition and Processing in Biology and Medicine", held in the Rochester area during the years 1960 through 1966. Petitioner was the organizer of these conferences. He has been a long-term member of a variety of professional societies such as the Institute of Electrical and Electronic Engineers, the Association for Computing Machinery, the New York Academy of Sciences, and several other scientific societies.

Petitioner has variously been listed in American Men of Science (Biographical Directory, Edited by Jaques Cattell Press, New York City), 1961, and Leaders in American Science (Who's Who in American Education, Nashville, Tennessee), 1962 and 1966.

CONCLUSIONS OF LAW

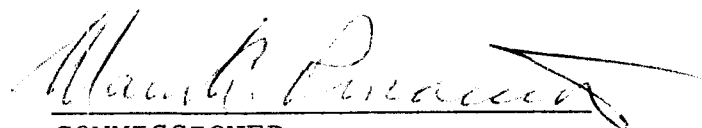
A. A prolonged course of instruction and learning has been pursued by petitioner in order to acquire the specialized knowledge with which to practice his occupation.

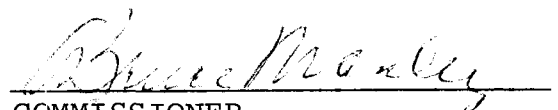
B. The petitioner has actively worked and practiced at the application of his knowledge and skill in his chosen field as contrasted to knowledge being used only in a consultative capacity.

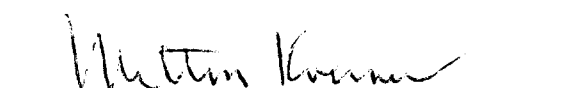
C. Petitioner is a founder and recognized authority in this field. Petitioner's work, a blend of biomedical engineering, computer science, and the application of mathematical methods to medicine, must be recognized as a professional activity exempt from unincorporated business tax under section 703(c) of the Tax Law. Teague v. Graves, 261 App. Div. 652. The taxpayer's petition is sustained and it is determined that there is no deficiency in unincorporated business tax against the taxpayer.

DATED: Albany, New York
February 7, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER