

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GIORDANO

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

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 & 1962 :

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 14th day of March , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Joseph Giordano

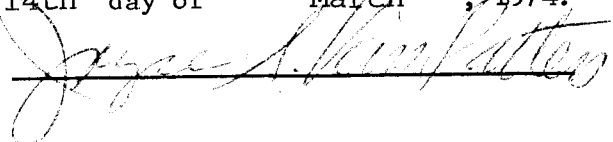
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Joseph Giordano  
1 Headley Way-The Ridge  
Woodbury, New York

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

14th day of March , 1974.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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JOSEPH GIORDANO

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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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 & 1962 :

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
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age, and that on the 14th day of March , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Martin J. Rosen, Esq.

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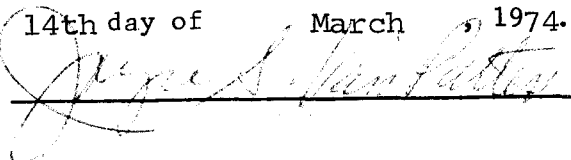
277 Broadway  
New York, New York 10007

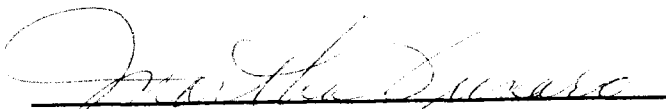
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Sworn to before me this

14th day of March , 1974.







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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
Mario A. Procaccino  
~~NORMAN P. SULLIVAN~~, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**March 14, 1974**

Mr. Joseph Giordano  
1 Headley Way-The Ridge  
Woodbury, New York

**Dear Mr. Giordano:**

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,

**EDWARD ROOK, Secretary**  
~~XXXXXXXXXXXX~~  
**State Tax Commission**

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH GIORDANO	:	DECISION
	:	
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.	:	
	:	
	:	

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The petitioner was served with a Statement of Audit Changes under File No. 2-5590160 and a 90-day letter on October 25, 1969. The petitioner timely filed a demand for a hearing. A formal hearing was held at the offices of the State Tax Commission in New York City before L. Robert Leisner, Hearing Officer. Martin J. Rosen appeared for the petitioner and the Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

FINDINGS OF FACT

1. The petitioner timely filed a petition.
2. The grounds of the petition were: (a) Petitioner enjoyed a professional status which exempted him from unincorporated business taxes for 1961 and 1962; (b) Petitioner was an employee; (c) Petitioner performed most of his services outside of New York and was liable for tax only on the portion done in New York State.
3. At the hearing, the petitioner withdrew contention (b).

The issues are confined to the contentions contained in paragraphs (a) and (c).

4. The petitioner does a combination of work which would be in the nature of an artist, furniture designer, draftsman or engineer. The petitioner did not have a license as an engineer. The major portion of petitioner's employment was in the furniture factories of the south, Goldsboro in North Carolina, at times, Gaylax in Virginia, Lexington in North Carolina, and Tennessee.

5. Petitioner, on 34 days did some of his work in factory offices maintained at plants without the State, and regularly did a portion of finishing or modification of designs within the State of New York. Petitioner earned some of his income without the State in 1961 and 1962.

6. Petitioner maintained an office at his home in New York State during the years in issue.

#### CONCLUSIONS OF LAW

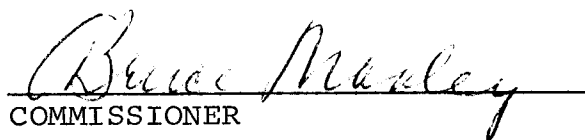
A. The occupation of furniture designer is not exempt under unincorporated business tax. Matter of DeVries, 266 App. Div. 1030, 44 N.Y.S. 2d 535, aff'd DeVries v. Graves 292 N.Y. 529. The petitioner must be licensed as an engineer to claim exemption in the engineering profession. Hughes v. Murphy, 21 A.D. 2d 134; Warnecke v. State Tax Commission 15 A.D. 2d 320; McCormack v. Bragalini, 8 A.D. 2d 885. The petitioner is not exempt from unincorporated business taxes by virtue of his occupation.

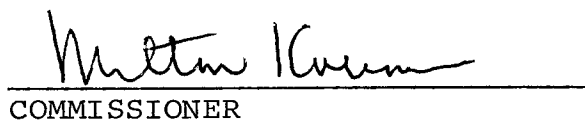
B. The petitioner operated an unincorporated business with an office in his home in New York State and all of his income from furniture designing was subject to unincorporated business tax in 1961 and 1962.

DATED: Albany, New York  
March 14, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER