

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
FRANK L. PHILLIPS, ANTHONY VASSALLO,
CHARLES MUELLER, ET AL., Individually
and as co-partners d/b/u
the firm name and style of :
PHILLIPS 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) 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 3rd day of May, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon PHILLIPS ASSOCIATES

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

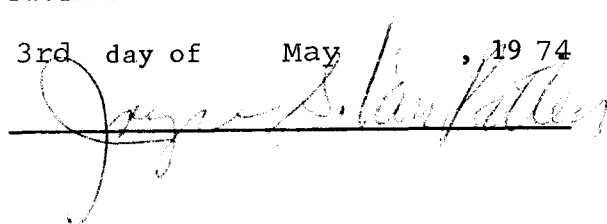
wrapper addressed as follows: Phillips Associates
101 Park Avenue
New York, New York

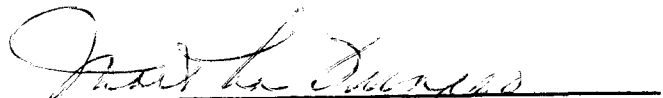
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

3rd day of May, 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of :

FRANK L. PHILLIPS, ANTHONY VASSALLO,
CHARLES MUELLER, ET AL., Individually
and as co-partners d/b/u
the firm name and style of :
PHILLIPS 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) 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 3rd day of May, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon HYMAN FRANK, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Hyman Frank, Esq.
Frank & Delamater
217 Broadway
New York, New York 10007
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

3rd day of May, 1974

Joyce A. [Signature]

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

~~NORMAN K. KALLMAN~~ PRESIDENT
Mario A. Procaccino

A. BRUCE MANLEY

MILTON KOERNER

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

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 3, 1974

Phillips Associates
101 Park Avenue
New York, New York

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

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| | : | |
| FRANK L. PHILLIPS, ANTHONY VASSALLO, | : | |
| CHARLES MUELLER, ET AL., Individually | : | |
| and as co-partners d/b/u | : | |
| the firm name and style of | : | |
| | : | DECISION |
| PHILLIPS ASSOCIATES | : | |
| | : | |
| for a Redetermination of Deficiencies or | : | |
| for Refund of Unincorporated Business | : | |
| Taxes under Article 23 of the Tax Law | : | |
| for the Years 1961, 1962 and 1963. | : | |
| | : | |
| | : | |

Frank L. Phillips, Anthony Vassallo, Charles Mueller, et al., individually and as co-partners d/b/u the firm name and style of Phillips Associates have filed a petition under section 689 of the Tax Law for the redetermination of deficiencies of unincorporated business tax under Article 23 of the Tax Law for the years 1961, 1962 and 1963. A hearing was duly held on November 19, 1970, at the offices of the State Tax Commission at 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Hyman Frank, Esq. of Frank and Delamater appeared for the petitioner and Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a firm of engineers, which had as a partner, a person (Anthony Vassallo), who was not licensed

as an engineer is entitled to the exemption from unincorporated business tax granted to professionals by section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Phillips Associates is an engineering firm and the immediate successor of Phillips and Elbal, which dissolved on July 5, 1960. At all times, Frank L. Phillips, a licensed engineer, was the principal partner of the firm. Mr. Elbal, another licensed engineer, was a partner until July 5, 1960. Mr. S. Steve Freeman, another licensed engineer, became a partner on April 10, 1962. Mr. Francis Green, another licensed engineer, became a partner on March 5, 1964. Mr. Anthony Vassallo was associated with the firm in some capacity from July, 1960 to March, 1964. He is an engineer, but is not licensed as a professional engineer.

2. Copies of amended business certificates filed in the New York County Clerk's Office in 1960, 1962 and 1964 show the following: As of July 5, 1960, "Anthony Vassallo...has replaced Peter M. Elbal in the partnership and purchased his interest"; as of April 10, 1962, "Anthony Vassallo...remains as partner"; as of March 5, 1964, "Anthony Vassallo...has resigned and discontinued his interest in the said business". Copies of partnership tax returns list Anthony Vassallo as a partner with a 41.25% interest in 1961 and 1962 and a 45% interest in 1963.

3. Mr. Phillips and Mr. Green, in testimony at the hearing, stated that Mr. Vassallo never had become a partner, that his money was merely on loan to the firm and the firm paid interest

on it, that Mr. Vassallo never performed services for the firm and seldom came to the office, and that Mr. Vassallo was never held out as a partner by the firm. There were no written partnership agreements and no books and records or other documents were offered in evidence.


CONCLUSIONS OF LAW


Even though Mr. Vassallo was not licensed as an engineer, it is clear that he was an engineer and that the firm was practicing engineering.

The deficiency is erroneous and is cancelled.

DATED: Albany, New York
May 3, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER