

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JAMES FRENCH BALDWIN

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 ~~(X)~~ 23 of the
Tax Law for the Year ~~(X)~~ 1966.

State of New York
County of Albany

JANET MACK, 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 December, 1975, she served the within
Notice of Decision ~~(XXXXXXXXXX)~~ by (certified) mail upon

JAMES FRENCH BALDWIN ~~(XXXXXXXXXX)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. James French Baldwin
78 Forest Avenue
Locust Valley, 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 ~~(XXXXXXXXXX)~~
~~(X)~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(XXXXXXXXXX)~~ petitioner.

Sworn to before me this

3rd day of December, 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES FRENCH BALDWIN

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 ~~(6)~~ 23 of the :
Tax Law for the Year ~~(1965)~~ 1966. :

State of New York
County of Albany

JANET MACK

, 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 December, 1975, she served the within

Notice of Decision ~~XXXXX DECISION XXXXX~~ by (certified) mail upon ARTHUR C. SILVERMAN, ESQ.

and HARVEY SCHWARTZ, ESQ. of GOLENBOCK and BARELL, ESQS.
(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Arthur C. Silverman, Esq.

and Harvey Schwartz, Esq.

Golenbock and Barell, Esqs.

60 East 42nd Street

New York, New York 10017

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 December, 1975

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES FRENCH BALDWIN

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 ~~(X)~~ 23 of the
Tax Law for the Year ~~(X)~~ 1966. :

State of New York
County of Albany

JANET MACK , 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 December , 1975, she served the within
Notice of Decision ~~XXXXXXXXXXXXXX~~ by (certified) mail upon HARVEY SCHWARTZ, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harvey Schwartz, Esq.
Kuh, Shapiro, Goldman, Cooperman & Levitt
800 Third Avenue
New York, New York 10022
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 December , 1975.

Mary [Signature]

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

DATED: Albany, New York
December 3, 1975

~~SECRET~~
(518)457-3850

Mr. James French Baldwin
78 Forest Avenue
Locust Valley, New York

Dear Mr. Baldwin:

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

Please take further notice that pursuant to
Section ~~(6)~~ **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,

NIGEL G. WRIGHT
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES FRENCH BALDWIN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1966.	:	

Petitioner, James French Baldwin of 78 Forest Avenue, Locust Valley, New York, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1966. (File No. 66569589).

On April 26, 1971, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$3,659.90 plus \$884.96 interest for a total of \$4,544.86 in unincorporated business tax.

On July 22, 1971, petitioner filed a formal petition contesting the said Notice of Deficiency which was subsequently amended in a second petition filed November 27, 1974.

A formal hearing was held on December 19, 1974, at Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing

Officer. The petitioner was represented by Arthur C. Silverman, Esq. and Harvey Schwartz, Esq. of Golenbock and Barell, Esqs. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Alexander Weiss, Esq. of counsel.

The record of said hearing has been duly examined and considered.

Petitioner filed a New York State income tax resident return for the tax year 1966. He filed no New York State unincorporated business tax returns for the year in question.

ISSUE

The issue is whether petitioner, James French Baldwin's activities relative to the above contested income qualified him for a professional exemption under section 703(c), article 23 of the Tax Law despite the fact that he had no formal college or university education.

FINDINGS OF FACT

1. Petitioner, James French Baldwin, holds four United States patents for numerous sophisticated nickel and cobalt base metals and coatings and has recently received a Notice of Allowance from the United States patent office for a fifth patent.

2. Petitioner is a member of the American Society for Metals, a leading professional association of metallurgists. For more than twenty years he has been exclusively engaged in the practice of

metallurgy. Petitioner's discoveries have contributed significantly to his field by enabling jet aircraft engines to be used in commercial and military applications at sustained high altitudes, temperatures, speeds and stresses.

3. Petitioner's accomplishments in his field have been the subject of numerous articles appearing in leading professional metallurgical journals.

4. The four alloys which petitioner has created may be briefly described as follows: 1) an alloy, known as PWA 692 and PWA 694, which has superior high temperature wear resistance; 2) an alloy known as PWA 771 and PWA 789 developed for high temperature bearings; 3) a high temperature nickel based alloy, known as B-1900, used in the turbine blades of most jet engines now fabricated; and 4) a new improved high temperature nickel based alloy, similar to B-1900, known as Baldwin-1.

5. The development of new and unique metal alloys demands expensive and rigorous testing on test samples, known as "test melts." Petitioner did not have his own facilities for either fabricating the test melts or conducting tests thereon. Instead, he made arrangements with metal suppliers and testing laboratories, of his choice,

to have the necessary research done on his new alloy. Once the tests showed the requisite qualities petitioner was trying to achieve, he then would submit his findings to a group of engineers and technicians employed by the company for whom he was doing the research. If these people found petitioner's initial findings satisfactory, they then authorized further testing, experimenting with larger quantities of the alloy under more diverse conditions. Petitioner had to pay the expense of the initial testing. However, the sponsor company would reimburse him for expenses incurred in the more extensive second round of testing. When the new alloy had been fully developed, petitioner would then turn it over to the sponsor company on a first refusal basis, retaining the patent himself. Further compensation would then be paid to petitioner in the form of royalties on his patent.

6. Petitioner holds no formal degrees in metallurgy or any related discipline. He began his informal, yet extensive, training in metallurgy in 1932 at a diesel engine plant of the American Locomotive Company. Over the course of the following twenty years, through both private and government related experience, he became extremely knowledgeable in many aspects of metallurgy. Often he was

assigned to the laboratory division of a particular plant. He received expert instruction in laboratories, often from the chief metallurgists, on various aspects of metallurgy. In addition to his on-the-job-training, petitioner also did considerable reading in the metallurgic field.

7. After years of experience and application of his knowledge, petitioner was often called upon to solve the difficult problems which had baffled other metallurgists. Eventually, he specialized in the conceptually difficult and sophisticated area of developing new and unique metal alloys.

8. Uncontroverted expert testimony has established that petitioner, James French Baldwin, is considered to be one of the most creative metallurgists in the field of high temperature metal superalloys. Moreover, he has been described by established metallurgic experts as a master of his field. The Income Tax Bureau has conceded that petitioner is an expert in the field of metallurgy.

9. Today, most colleges, universities and engineering schools offer degrees in metallurgy including the Massachusetts Institute of Technology, the California Institute of Technology, Syracuse University, Columbia University, and the University of Pennsylvania. Many institutions also offer masters degrees and doctorates in the discipline as well.

10. Capital was not a material income producing factor to petitioner.

CONCLUSIONS OF LAW

Petitioner is not subject to the unincorporated business tax because his activities constitute the practice of a profession within the meaning of section 703(c). Capital was not a material income producing factor, and all of his unincorporated business gross income for the taxable year was derived from personal services actually rendered by him.

The Commission's regulation, Reg. Sec. 203.11(b)(1), defines professions to include any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others as a vocation.

Educational background, licensing regulations, and the existence of standards of conduct have been listed as factors to be taken into consideration in determining whether certain activities constitute the practice of a profession. Matter of Rosenbloom v. State Tax Comm., 44 AD 2d 69. While these measures may aid in deciding what is a profession and what is not, they are not dispositive in themselves.

Although metallurgy is a recognized academic discipline, it has been held that actual professional achievement, as opposed to an academic degree, is the true measure of the professional. Teague v. Graves, 27 N.Y.S. 2d 762 (3d Dept. 1941), aff'd 287 N.Y. 549 (1941); Geiffets v. Mealey, 293 N.Y. 583 (1944); and Voorhees v. Bates, 308 N.Y. 184 (1954). The level of knowledge and skill attested to by an academic degree is what is really important, not the degree itself. Similarly, the absence of a license has been held not to bar the professional exemption. Kahn & Jacobs v. State Tax Comm., 333 N.Y.S. 2d 957 (3d Dept. 1972), aff'd 33 N.Y. 2d 549 (1973).

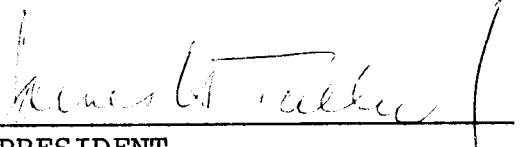
In addition to the other indicia of professionalism, it has also been considered important whether or not the services performed must involve something more than the type generally performed by those in the broader categories of a trade, business or occupation. Matter of Koner v. Procaccino, 45 AD 2d 551. Petitioner easily meets this

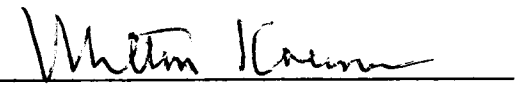
standard, since few metallurgists have reached the degree of experience and specialization he has attained.

One further factor by which to measure the professional is the degree to which his activities constitute a public service. Tannenbaum v. State Tax Comm., 46 AD 2d 400, 362 N.Y.S. 2d 608 (3d Dept. 1975). The added safety that is brought to thousands of air travelers daily, due to aircraft design improvements made possible as a result of petitioner's alloys, qualify petitioner under this requirement also.

DATED: Albany, New York
December 3, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER