

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE D. BOGART

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) 1967, 1968, 1969:  
and 1970.

State of New York  
County of Albany

MARY GROFF, 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 30th day of December, 1975, she served the within  
Notice of Decision ~~(or Determination)~~ by (certified) mail upon GEORGE D. BOGART

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

wrapper addressed as follows: Mr. George D. Bogart  
Housatonic River Road  
Salisbury, Connecticut

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)~~  
~~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

30th day of December, 1975.

Janet Mack

Mary Groff

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE D. BOGART

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(s) 1967, 1968, 1969 :  
and 1970.

State of New York  
County of Albany

MARY GROFF

, 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 30th day of December , 1975, she served the within

Notice of Decision (~~xxx Determination~~) by (certified) mail upon JOSEPH R. SATZ, ESQ.

(representative of) the petitioner in the within

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

wrapper addressed as follows:

Joseph R. Satz, Esq.

Forsythe, McGovern & Pearson, P.C.

345 Park 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

30th day of December , 1975.

Janet Mack

Mary Groff



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Leisner  
Mr. Coburn  
(518) 457-3850

DATED: Albany, New York  
December 30, 1975

Mr. George D. Bogart  
Housatonic River Road  
Salisbury, Connecticut

Dear Mr. Bogart:

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

Please take further notice that pursuant to  
Section ~~720~~ **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,

  
Paul B. Coburn  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GEORGE D. BOGART	:	DECISION
for a Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968, 1969 and 1970.	:	

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Petitioner, George D. Bogart, Housatonic River Road, Salisbury, Connecticut, has filed a petition for a redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967, 1968, 1969 and 1970. (File No. O-66560318).

The petitioner waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUES

I. Was the petitioner, George D. Bogart, entitled to a professional exemption from the unincorporated business tax pursuant to section 703(c), Tax Law?

II. Do the provisions of Article 23, Tax Law violate either the Constitution of the United States or the New York State Constitution?

FINDINGS OF FACT

1. The petitioner, George D. Bogart, timely filed resident New York State income tax returns for the tax years in question.

2. On February 16, 1971, a Statement of Audit Changes was issued against the petitioner asserting additional tax liability and interest thereon in the total amount of \$4,799.68 for the years 1967, 1968 and 1969 pursuant to Article 23, Tax Law. On December 3, 1970, a second Statement of Audit Changes for the year 1970 was issued asserting additional tax liability of \$6,748.03, interest in the amount of \$661.88 and a penalty in the amount of \$1,777.60. On April 13, 1973, notices of deficiencies were issued against the taxpayer. The Income Tax Bureau asserted that the petitioner was engaged in an unincorporated business. A remittance of \$2,250.00 was received from the taxpayer and applied against the assessed deficiency for 1970.

3. Petitioner, George D. Bogart, was engaged in business as a management consultant and a fund raiser during the tax years in question.

#### CONCLUSIONS OF LAW

A. That the petitioner cannot avail himself of a professional exemption pursuant to section 703(c). 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. (20 NYCRR 203.11(b) (1)). The activities of fund raiser or management consultant are not specifically defined as professions by the State Tax Commission. The occupation of management consultant has been deemed non-exempt from unincorporated business tax. (See In the Matter of Petition of Robert B. Smallwood, State Tax Commission Decision, August 21, 1972). The petitioner failed to prove that the occupation of fund raiser required the prolonged instruction in some branch of science or learning necessary to denote it as a profession.

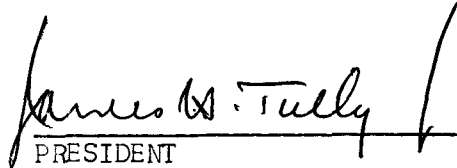
B. That the constitutionality of the laws of the State of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that Article 23, Tax Law, is constitutional to the extent that it relates to the imposition of unincorporated business tax liability and the professional exemption thereto.

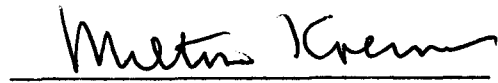
C. That the petitioner acted in good faith.

D. That all penalties are cancelled. In all other respects, the petition is denied.

DATED: Albany, New York  
December 30, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER