

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CLIFFORD HEINZERLING

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 (8) 23 of the  
Tax Law for the Year(s) 1963 and 1964:

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 29th day of December, 1975, she served the within  
Notice of Decision ~~(BY REGISTERED MAIL)~~ by (certified) mail upon Clifford Heinzerling

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

wrapper addressed as follows: Mr. Clifford Heinzerling  
11 Straight Lane  
Levittown, New York 11756

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)~~  
~~the~~ 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

29th day of December, 1975

Mary Goff

Janet Mack



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 29, 1973

Mr. Clifford Heinserling  
11 Straight Lane  
Levittown, New York 11756

Dear Mr. Heinserling:

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

Please take further notice that pursuant to  
Section 481 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

Enc.

HEARING OFFICER

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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|                                       |   |          |
|---------------------------------------|---|----------|
| In the Matter of the Petition         | : |          |
| of                                    | : |          |
| CLIFFORD HEINZERLING                  | : | DECISION |
| for Redetermination of Deficiency or  | : |          |
| for Refund of Unincorporated Business | : |          |
| Tax under Article 23 of the Tax Law   | : |          |
| for the Years 1963 and 1964.          | : |          |

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Petitioner, Clifford Heinzerling, 11 Straight Lane, Levittown, New York 11756, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963 and 1964. (File No. 26253781).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 21, 1975, at 3:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (James A. Scott, Esq. of counsel).

ISSUE

Did petitioner, Clifford Heinzerling's activities during the years 1963 and 1964 as an industrial designer constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioner, Clifford Heinzerling, and his wife filed New York State income tax resident returns for the years 1963 and 1964. He did not file New York State unincorporated business tax returns for said years.

2. On August 15, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Clifford Heinzerling, and his wife imposing unincorporated business tax upon the income received by him from his activities as an industrial designer during the years 1963 and 1964. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$752.61.

3. The Income Tax Bureau conceded at the formal hearing that petitioner, Clifford Heinzerling's wife, Barbara W. Heinzerling, was not subject to the unincorporated business tax for the years 1963 and 1964.

4. During the years 1963 and 1964, petitioner, Clifford Heinzerling, designed containers, cartons, boxes, bottles, decanters, cosmetic dispensers and gift units. He specified shapes, sizes, colors, volumes and kinds of materials to be used. He was retained by his clients on a fee basis for each assignment. His clients included American Can Company, Hazel Bishop Cosmetics, Seagrams and Avon Cosmetics. He has been engaged in this type of work since 1951.

5. Petitioner, Clifford Heinzerling, attended Bucknell University as an undergraduate for two years. He took courses in business administration and art. He attended Princeton University and Northwestern University while in the military. He attended Hofstra University for six months upon leaving the military. He has not received any academic degrees. He has not taught in any schools. He has not published any books or articles. He does not belong to any professional societies.

6. Petitioner, Clifford Heinzerling's income as an industrial designer during the years 1963 and 1964 was derived solely from personal services rendered. Capital was not a material income producing factor.

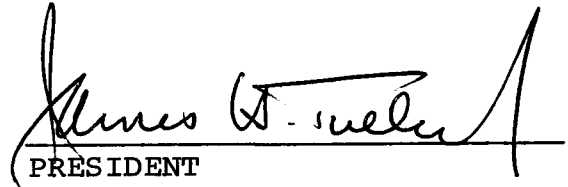
CONCLUSIONS OF LAW

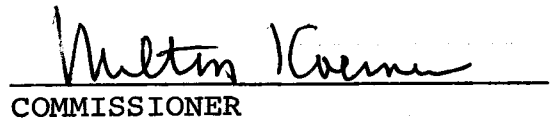
A. That the activities of petitioner, Clifford Heinzerling, as an industrial designer during the years 1963 and 1964 constituted the practice of a profession exempt from the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law. Teague v. Graves, 1941, 261 App. Div. 652, 27 N.Y.S. 2d 762 affirmed 287 N.Y. 549, 38 N.E. 2d 222; Argiro V. Gallman, 1975, 46 A.D. 2d 397, 363 N.Y.S. 2d 30.

B. That the petition of Clifford Heinzerling is granted and the Notice of Deficiency issued August 15, 1966, is cancelled.

DATED: Albany, New York  
December 29, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER