

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEWIS MICHNIK

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) 1965, 1966 and:  
1967.

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

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 11th day of March, 1975, she served the within  
Notice of Decision ~~(xxx Deetermination)~~ by (certified) mail upon LEWIS MICHNIK

~~(xxx Deetermination)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Mr. Lewis Michnik  
781 West Ferry Street  
Buffalo, New York 14222

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 ~~(xxx Deetermination)~~  
~~(x)~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~(xxx Deetermination)~~ petitioner.

Sworn to before me this

11th day of March, 1975.

Richard M. Manly

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEWIS MICHNIK

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) 1965, 1966 and  
1967.

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 11th day of March, 1975, she served the within  
Notice of Decision ~~for Redetermination~~ by (certified) mail upon RONALD H. JENSEN, ESQ.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Ronald H. Jensen, Esq.  
720 Liberty Bank Building  
Buffalo, New York 14202

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

11th day of March, 1975.

Katherine N. Manley

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

**Saul Heckelman, Acting President**  
~~XXXXXXXXXXXXXXXXXXXX~~

A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
**March 11, 1975**

**Mr. Lewis Michnik**  
**781 West Ferry Street**  
**Buffalo, New York 14222**

**Dear Mr. Michnik:**

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

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

**L. Robert Leisner**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
LEWIS MICHNIK : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the Years 1965, 1966 and 1967. :

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Lewis Michnik petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on June 22, 1971, at 1:30 P.M. before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Ronald H. Jensen, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the taxpayer exempt from the unincorporated business tax as a professional?

FINDINGS OF FACT

1. Petitioner, Lewis Michnik, timely filed New York State income tax returns but did not file for the years 1965, 1966 and 1967.
2. A Notice of Determination of deficiencies in unincorporated business taxes and penalties for those years was issued on December 29, 1969, against taxpayer under File No. 74050357.
3. The taxpayer petitioned for redetermination of the deficiencies.
4. Taxpayer petitioned against the determination that the taxpayer engaged in the carrying on of an unincorporated business and that consequently, income derived therefrom was subject to the

unincorporated business tax under Article 23 of the Tax Law. The taxpayer also petitioned against the determination that the failure of the taxpayer to file unincorporated business tax returns on the prescribed dates was "due to willful neglect" and not "to reasonable cause", and that he was, therefore, subject to the 25% penalty imposed under section 685(a) of the Tax Law.

5. Lewis Michnik received his degree as a Bachelor of Engineering in Electrical Engineering (BEEE) from Johns Hopkins University in 1948 and his Master of Science in Electrical Engineering degree (MSEE) from the California Institute of Technology in 1950. The taxpayer is a member of the professional society, "The Institute of Electrical and Electronic Engineers, Inc."

6. For the taxable years in question, the taxpayer derived substantially all his income under a per diem contract with Sierra Research Corporation ("Sierra") of Buffalo, New York. Sierra designed, manufactured and sold electronic and electromagnetic systems and subsystems. Approximately 80% of its sales were under military contracts with the United States Government. Sierra produced special purpose radar systems, telemetry and data transmission systems and specialized military products, particularly civil air traffic control systems and digital computer ancillary equipment, for commercial and industrial use. Most of Sierra's products were of its own design resulting either from its own internal research development program or from customer sponsored programs.

7. Taxpayer's work with Sierra consisted primarily of designing and developing radar systems. Frequently, he worked on specific contracts that had been awarded to Sierra. In addition, he designed and developed systems in connection with Sierra's own internal research and development program.

8. An example was his work on the design development of the "One-Way Range and Azimuth System for Stationkeeping" in 1964 (Patent No. 3,336,591; filed December 1964, granted August 1967). "Stationkeeping" means a system which enables aircraft to maintain their relative positions in close formation flights under all weather conditions. The taxpayer was instrumental in developing the above patent which resolved this problem. This is one of the most important patents presently held by Sierra and constitutes the basis of the Adverse Weather Aerial Delivery System (AWADS).

9. The taxpayer also participated in the designs and invention of the following devices and systems:

PATENTS:

<u>FILING DATE</u>	<u>ISSUE DATE</u>	<u>PATENT NO.</u>	<u>TITLE</u>
June 1966	July 1967	3,329,953	Doppler Target Simulator
February 1967	July 1968	3,395,384	Cooperative Radar & Reflector System

PATENT APPLICATIONS:

December 1966	Spectrum-Centered Receiver
March 1968	CAS Receive-Only Clock Synchronization
January 1968	Follow the Leader Stationkeeper System
August 1968	Synchronized Vortac Tacan CAS System
August 1968	Mobile Clock Synchronization Techniques
February 1969	Beacon Calibrated AFC Radar

10. The taxpayer has contributed (as coauthor) various articles on his area of specialization to the following professional journals (copies of the articles are enclosed with this protest):

Journal of the American Helicopter Society, Vol. 10, No. 1, January 1965, "A Stationkeeping System for IFR Formation Flying".  
1965 IEEE International Convention Record, Part 4, "One-Way Ranging and Direction Finding for IFR Formation Stationkeeping".

Air Transport Association of America, Collision Avoidance System Technical Working Group Minutes, March 1967, "Discussion of Empirical Stationkeeping Performance Data of Interest for Airline Collision Avoidance Systems".

IEEE Transactions on Aerospace and Electronic Systems, Vol. AES-4, March 1968, "History of Time/Frequency Technology".

11. The taxpayer sincerely believed and still believes that his activities constitute a profession within the meaning of the Tax Law. Accordingly, he did not file for any of the years in question, a New York State unincorporated business tax return. For the years 1966 and 1967, his income tax return was prepared by the accounting firm of Ernst and Ernst. He relied on the firm to advise him as to what returns he was required to file. At no time did such firm advise him or discuss with him the possibility that he was required to file an unincorporated business tax return.

CONCLUSIONS OF LAW

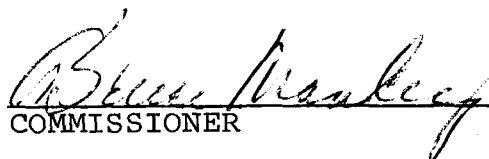
A. The taxpayer was engaged in the profession of industrial designing and was exempt from the unincorporated business tax. Teague v. Graves, 261 App. Div. 652, 27 N.Y.S. 2d 762 (3rd Dept., 1941) aff'd without opinion 287 N.Y. 549, 38, N.E. 2d 222 (1941).

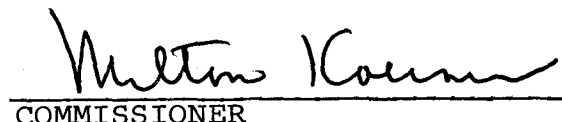
B. The taxpayer's petition is granted. It is determined that there is no deficiency in unincorporated business tax against the petitioner.

DATED: Albany, New York  
March 11, 1975

STATE TAX COMMISSION

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COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER