

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER SMACHLO

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article ~~(ss)~~ 23 of the
Tax Law for the Year(s) 1963, 1964, :
1965 and 1966.

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 29th day of January , 1975 , she served the within
Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon WALTER SMACHLO

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Walter Smachlo
R.F.D. #2
Rexford, 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)~~
~~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

29th day of January , 19 75

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER SMACHLO

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) 1963, 1964,
1965 and 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 29th day of January, 1975, she served the within
Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon ALLAN BAKST, P.C.

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

Allan Bakst, P.C.
21 East 40th Street
New York, New York 10016

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

29th day of January, 1975.

For the said D. M. Smachlo

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
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
January 29, 1975

Mr. Walter Smachlo
R.F.D. #2
Roxford, New York

Dear Mr. Smachlo:

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

Please take further notice that pursuant to
Section (x) **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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WALTER SMACHLO :
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1963, 1964, 1965 and 1966. :
:

DECISION

Petitioner, Walter Smachlo, has filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1963, 1964, 1965 and 1966. (File No. 68042152.)

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on Tuesday, February 27, 1973, at 11:15 A.M. Petitioner appeared by Allan Bakst, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Did petitioner, Walter Smachlo's activities as an engineer, during the years 1963, 1964, 1965 and 1966 constitute the practice of a profession exempt from the unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Walter Smachlo and his wife, filed New York State income tax resident returns for the years 1963, 1964, 1965 and 1966. They did not file New York State unincorporated

business tax returns for said years.

2. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Walter Smachlo, imposing unincorporated business tax upon the income received by him from his business activities during the years 1963, 1964, 1965 and 1966. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$10,780.35.

3. Petitioner, Walter Smachlo, received a Mechanical Engineering degree from Mississippi State College and is a licensed professional engineer in the State of Mississippi. He served in the Army for six years during which he received academic training in electrical engineering at Princeton University, worked in the radiation laboratory under Dr. Robert Oppenheimer and then did radar development work at Langley Airfield. He received a Masters Degree in Business Administration from Howard University and while there specialized in manufacturing under General George Dorit, the president of American Research and Development Company of Boston.

4. Immediately after college, petitioner, Walter Smachlo, worked for Higgens Shipyards in New Orleans and did the drafting, surveying and mathematics necessary for the construction of Liberty Ships. For a time he was employed by General Electric Co., first at Boston, Massachusetts and then at Schenectady, New York, where he worked on jet engines. Mr. Smachlo then worked in Puerto Rico, Santo Domingo and Mexico designing and erecting bulk sugar mills. He also worked as a consulting engineer for

different firms, including Arthur D. Little of Boston, and later started his own business in Connecticut as "United Engineering Service". All of the above training and experience was prior to the tax years in question.

5. Petitioner, Walter Smachlo, moved to New York in November of 1957. He is not licensed in New York State as a professional engineer and has not secured or submitted a ruling from the Department of Education of the State of New York that his activities in the engineering field are not in violation of the law prohibiting the practice of engineering without a license.

6. Upon moving to New York, petitioner, Walter Smachlo, obtained his clients primarily by referral from his principal client, General Electric Company, and every company that he works for has a licensed professional engineer on its payroll.

7. Petitioner, Walter Smachlo, has expertise primarily in the fields of metallurgy and metal castings. He makes use of the following areas of specialized academic knowledge: chemistry, stress analysis, mathematics, through differential and exponential equations and mechanical design. His work is of the highest caliber and includes patentable products. Mr. Smachlo performs the services of consultation, investigation, evaluation, planning and design in connection with machines, equipment and processes. Those services are concerned with or involve the safeguarding at least of property, if not of life and health. These services require the application of engineering principles and data.

8. Petitioner, Walter Smachlo, did no work as a salesman during the years in question and did no work in consulting others

on sales except as an essential and normal part of the engineering design of products. He received no commission on goods sold and was not a sales engineer. He did not work in business finance, business management or in cost control except as these were essential to the application of his engineering knowledge.

9. During the years in question, petitioner, Walter Smachlo, maintained an office in his home at Vischer's Ferry, New York. He had a professional card and used a letterhead bearing the title "Management Consulting Engineer".

CONCLUSIONS OF LAW

A. That the activities of petitioner, Walter Smachlo, as a consulting engineer during the years 1963, 1964, 1965 and 1966 constituted the practice of a profession, exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of Walter Smachlo is granted, and the Notice of Deficiency issued November 30, 1970 is cancelled.

DATED: Albany, New York
January 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER