

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE H. OWENS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~of Period(s)~~ 1964 :  
and 1965.

State of New York  
County of Albany

Carmen Mottolese, 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 20th day of August, 1976, she served the within Notice of Decision by (certified) mail upon George H. Owens (~~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 H. Owens  
West Lake Road  
Skaneateles, 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 Postal Service 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

20th day of August, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 20, 1976

TELEPHONE: (518) **457-3850**

Mr. George H. Owens  
West Lake Road  
Skaneateles, New York

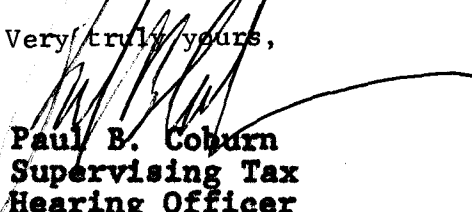
Dear Mr. Owens:

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

Please take further notice that pursuant to  
Section(§) **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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: ~~Back to the Representative~~

Taxing Bureau's Representative:

STATE TAX COMMISSION

STATE OF NEW YORK

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In the Matter of the Petition	:	
of	:	
GEORGE H. OWENS	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the Years 1964 and 1965.	:	

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Petitioner, George H. Owens, of West Lake Road, Skaneateles, New York, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1964 and 1965.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on July 22, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer represented himself and the Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq.

ISSUE

The issue is whether during the taxable years in question petitioner, George H. Owens, was practicing the profession of engineering so as to be exempt from the unincorporated business income tax of the State of New York.

FINDINGS OF FACT

1. Petitioner, George H. Owens, timely filed New York State income tax resident returns for the years 1964 and 1965. He did not file unincorporated business tax returns for the above two years in question.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1964 and 1965 was issued on March 30, 1970, against the taxpayer under File No. 34662879.

3. The taxpayer petitioned for redetermination of the deficiencies and a formal hearing was held.

4. Petitioner, George H. Owens, obtained his formal education in the field of mechanical engineering by attending Elmira College and Syracuse University. He began his studies at Elmira College in their special two year program after which he transferred to Syracuse University. During the course of his studies at both schools, petitioner took curricula which would qualify him to graduate with a Bachelors Degree in Mechanical Engineering. Due to family illness he was unable to complete the fourth year of study at Syracuse and consequently did not graduate and receive a degree. Petitioner's formal education was further supplemented by informal education gained as the

result of thirteen years of practical engineering experience. From 1950 to 1964, he worked for two nationally known corporations working in various areas of company functions, ranging from applications engineering to industrial product design management.

5. During the years in question, various companies employed petitioner on a contract basis to solve technical problems. His work consisted of such things as the application of heat and vacuum<sup>v</sup> systems, filtration systems, and the application of sintered metal materials compressed under high pressures for ultrafiltration removal of certain suspensions from chemical liquids.

6. Petitioner has submitted letters from several of the companies for which he did work during the years 1964 and 1965, attesting to the skilled engineering services provided them by the petitioner. Further, petitioner did not engage in any selling activities on behalf of any of his employer companies. He received compensation only for engineering work done.

7. During the years in question, petitioner maintained no office, nor did he retain any employees or secretaries. He incurred certain expenses for catalogs and binders for the enclosure of technical data, engineering drawings, instructional manuals, operational manuals, maintenance manuals, specifications and form sheets. These expenditures

were reported as advertising expense on Schedule "C" of petitioner's Federal income tax returns. Also incurred during the period in question and reported under promotional expenses of Federal income tax returns Schedule "C" were expenditures made by petitioner while attending a professional engineers conference. His attendance at this conference was not as a sales representative but rather as an independent professional engineer attempting to stay abreast of the latest developments and opportunities in his field.

8. During 1964 and 1965, petitioner, George H. Owens was a member of the American Society of Lubrication Engineers and the American Society of Chemical Engineers.

#### CONCLUSIONS OF LAW

A. The Tax Law, sec. 703(c), Reg. sec. 203.11 (b)9(i) defines a profession 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 service their interests or welfare in the practice of an Art or Science founded on it. The Tax Commission recognizes professional engineering, of which mechanical engineering is one form, as a profession. Since petitioner is a lubrications engineer, a type of mechanical engineer, he qualifies under the above

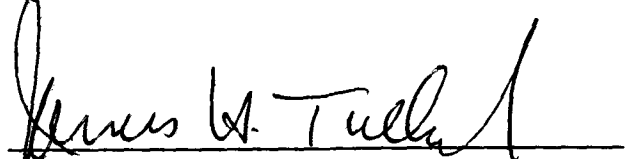
regulation as a professional. It matters not that he holds no formal academic degree in his field. Similarly, it is of no consequence that he is not licensed, because the test for determining eligibility for the exemption is based on what the individual does and not on whether he holds an academic degree or a state license. Geiffert v. Mealey, 293 N.Y. 583 (1944); Kahn and Jacobs v. State Tax Commission, 39 A.D. 2d 278; aff'd 33 N.Y. 2d 549 (1973).

B. Petitioner also qualifies for a professional exemption since at least 80% of his income was derived from personal engineering service rendered, and capital was not a material income producing factor. The Tax Law, sec. 703(c), reg. sec. 203.11(b)(2) and (3).

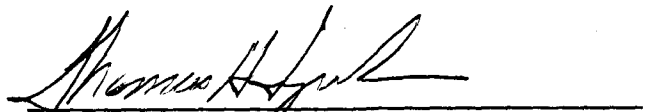
C. The taxpayer's petition is sustained. It is determined that there are no deficiencies against petitioner in unincorporated business tax for the years 1964 and 1965.

DATED: Albany, New York  
August 20, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER