

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES R. ROGERS

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) ~~or Period(s)~~ :
1971, 1972 and 1973.

State of New York
County of Albany

Bruce Batchelor , 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 21st day of December , 1976 , she served the within
Notice of Decision by (certified) mail upon Charles R.
Rogers ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Charles R. Rogers
65 Hillcrest Avenue
Geneva, New York 14456
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

21st day of December , 1976.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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1971, 1972 and 1973.

State of New York
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Bruce Batchelor , 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 21st day of December , 1976, she served the within
Notice of Decision by (certified) mail upon Charles E.
Earl, Accountant (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Charles E. Earl, Accountant
58 B. Milton Street
Geneva, New York 14456
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

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Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 21, 1976

TELEPHONE: (518) ~~477-3850~~

Mr. Charles R. Rogers
65 Hillcrest Avenue
Geneva, New York 14456

Dear Mr. Rogers:

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

Please take further notice that pursuant to
Section(s) **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,
Frank J. Puccia
FRANK J. PUCCIA
SUPERVISOR OF
SMALL CLAIMS HEARINGS

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

CHARLES R. ROGERS :

DECISION

for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Taxes under Article 23
of the Tax Law for the Years 1971, 1972 and 1973. :

Petitioner, Charles R. Rogers, residing at 65 Hillcrest Avenue, Geneva, New York 14456, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1971, 1972 and 1973. (File No. 3-45088991).

A small claims hearing was held August 11, 1976 at 1:15 P.M. at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, before Harry Huebsch, Hearing Officer. Petitioner, Charles R. Rogers, appeared with his representative, Charles E. Earl, Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq., (Richard Kaufman, Esq., of counsel).

ISSUE

Did petitioner, Charles R. Rogers' activities as a consultant during the years 1971, 1972 and 1973 constitute the practice of a profession.

FINDINGS OF FACT

1. Petitioner, Charles R. Rogers, filed New York State income tax returns for the years 1971, 1972 and 1973. He did not file New York State unincorporated business tax returns for said years.

2. On February 21, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Charles R. Rogers, imposing unincorporated business taxes for the years 1971, 1972 and 1973 upon the income received by him resulting from his activities as a consultant. A Notice of Deficiency was issued

September 29, 1975 in the amount of \$900.29 unincorporated business tax due plus \$132.10 interest for a total sum of \$1032.39.

3. Petitioner, Charles R. Rogers, was a consultant for many mail order, horticultural nursery stock firms. He advised these firms as to a variety of problems involved in this field. Petitioner, Charles R. Rogers, was paid on a fee basis. No deductions were made from his compensation. He was not issued withholding tax statements from his employers. Petitioner, Charles R. Rogers, had an office in his home. He was not reimbursed for any expenses and the expenses that he incurred were deducted on Federal Schedule C.

4. Petitioner, Charles R. Rogers, took no special courses of study relating to his consulting activities. All his knowledge was gained through experience in this field.

5. Petitioner, Charles R. Rogers, contended that he was not an employee but rather an independent contractor exempt from imposition of unincorporated business tax because of his professional status.

CONCLUSIONS OF LAW

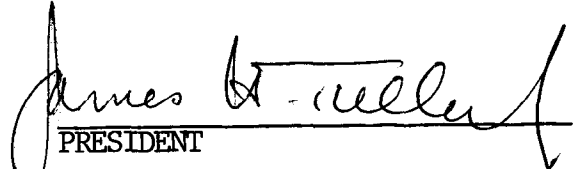
A. That the activities of petitioner, Charles R. Rogers, as a consultant during the years 1971, 1972 and 1973, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

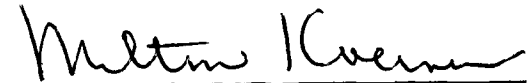
B. That the aforesaid activities of the petitioner, Charles R. Rogers, during the years 1971, 1972 and 1973 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

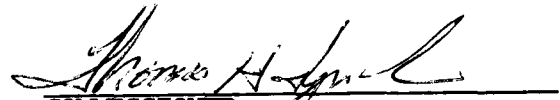
C. That the petition of Charles R. Rogers is denied and the Notice of Deficiency issued September 29, 1975 is sustained.

DATED: Albany, New York
December 21, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER