

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JENS J. WEGSCHEIDER

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)~~ 1968; :
1969 and 1970.

State of New York
County of Albany

Donna Scranton, 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 10th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Jens J. Wegscheider (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Jens J. Wegscheider
14 Mulberry Drive
Huntington, New York 11743
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

10th day of November, 1976

Donna Scranton

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

November 10, 1976

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

Mr. Jens J. Wegscheider
14 Mulberry Drive
Huntington, New York 11743

Dear Mr. Wegscheider:

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

Please take further notice that pursuant to
Section(2) **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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JENS J. WEGSCHEIDER	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1968, 1969, and 1970.	:	

Petitioner, Jens J. Wegscheider, 14 Mulberry Drive, Huntington, New York 11743, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for 1968, 1969 and 1970 (File No. 0-64375757). A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 9, 1976. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUES

I. Whether the petitioner's activities were that of an engineer, a profession exempt from the unincorporated business tax.

II. Whether the petitioner's income from his activities with the "Travel Information Bureau" is subject to the unincorporated business tax.

III. Whether the petitioner's income from his activities with the "Advocates of International Trade and Comity" (AITC) is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Jens J. Wegscheider, filed New York State income tax resident returns for 1968, 1969, and 1970, showing net income from all his business activities as \$9,395.16, \$10,033.51 and \$23,978.19, respectively. However, he did not file unincorporated business tax returns for any of the years in question.

2. Upon audit, the Income Tax Bureau issued a Notice of Deficiency dated, June 24, 1974, holding the income from all of petitioner's activities to be subject to the unincorporated business tax.

3. Petitioner is a mechanical engineer specializing in the field of power plants.

4. Petitioner is a graduate of the State Engineering School of Kassel in Germany, and has participated in graduate work in nuclear engineering at the University of Michigan.

5. Petitioner was retained, under a contractual agreement, by the American M.A.N. Corporation, to perform services which were described in the agreement as follows:

"In close cooperation with American MAN corporation to develop a technical presentation and marketing program on MAN steam turbines,

to introduce MAN turbines to prospective buyers, to prepare and negotiate proposals and to secure orders for MAN turbines."

6. The agreement also stipulated that the petitioner would be paid \$58.50 per day as a consultant fee for engineering services rendered and a commission on all steam turbines sold by him.

7. Petitioner stated that he was not an employee of the American M.A.N. Corporation, but rather a part-time consultant representing them in his particular field of engineering.

8. Petitioner asserted that his activities with the said corporation were in the nature of engineering and that a specialized technical knowledge was required to perform his services.

9. Petitioner's net income from his engineering activities in 1968, 1969 and 1970 was \$8,362.37, \$3,314.14, and \$5,774.92, respectively.

10. Petitioner, through his own research and study became an authority on air travel, and authored a book entitled "Air Travel and Charter Flight Handbook," under the pen name of Jens Jurgen.

11. For purposes of publishing and distributing his book, the petitioner created a sole proprietorship called the "Travel Information Bureau."

12. Upon the success of his travel book, the petitioner was frequently requested to write articles for various publications as an expert in the field.

13. Subsequently, a second edition of the book was published and distributed by the Travel Information Bureau.

14. In addition, the Travel Information Bureau subsequently sold tickets to travelers who had requested this type of service. The commissions were shared with a travel agency from which the tickets were purchased.

15. The cost of tickets purchased by the Travel Information Bureau to be sold at a profit, was \$10,296.60 for 1969 and \$32,361.02 for 1970. The exact cost of tickets sold in 1968 by the Travel Information Bureau was not available.

16. Net income from the Travel Information Bureau in 1968, 1969 and 1970 was \$516.40, \$1,909.64 and \$1,177.53, respectively.

17. Petitioner contends that the income from the Travel Information Bureau was from his activities as an author, a profession exempt from the unincorporated business tax.

18. The petition also created an additional sole proprietorship called "Advocates of International Trade and Comity" (A.I.T.C.).

19. The A.I.T.C. charged dues to its members, published a newsletter and operated charter flights.

20. The cost of charter travel purchased by A.I.T.C. to be sold at a profit to its members was \$203,897.69 in 1969, and \$199,446.61 in 1970. The exact cost figures for 1968 was not available.

21. Net income from A.I.T.C. for 1968, 1969 and 1970 was \$516.39, \$4,809.73 and \$17,025.74, respectively.

22. Petitioner is uncertain as to whether A.I.T.C. should be subject or exempt from the unincorporated business tax.

CONCLUSIONS OF LAW

A. That although the petitioner's activities required the technical knowledge of a mechanical engineer, the activities actually performed by him were in the nature of selling, and the engineering services rendered were directly attributed to his selling activities. Accordingly, the petitioner's business income from the American M.A.N. Corporation is subject to the unincorporated business tax within the meaning and intent of section 703, of Article 23 of the Tax Law.

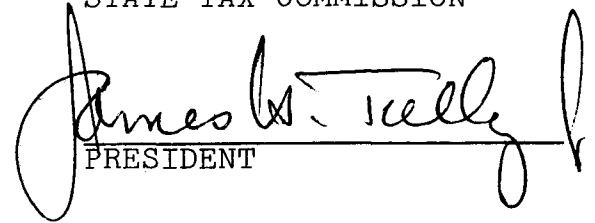
B. That the income earned by the Travel Information Bureau was not solely from the petitioner's activities as an author, but resulted from a conglomerate of numerous activities consisting of authoring, publishing and selling the travel book; and from the selling of airline tickets. Accordingly, the Travel Information Bureau is an unincorporated business subject to the unincorporated business tax within the meaning and intent of section 703, Article 23, of the Tax Law.

C. That the activities of the " Advocates of International Trade and Comity" are that of an unincorporated business subject to unincorporated business tax within the meaning and intent of section 703, of Article 23 of the Tax Law.

D. That the petition of Jens J. Wegscheider is denied
and the Notice of Deficiency issued June 24, 1974 is sustained.

DATED: ALBANY, NEW YORK
November 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER