

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEDYARD G. KASTNER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of **Unincorporated Business** :  
Taxes under Article ~~(x)~~ 23 of the :  
Tax Law for the Year(s) ~~xxxxxx~~ :  
1967, 1968 and 1969

State of New York  
County of Albany

John Huhn

, 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 1 day of September, 1977, ~~she~~ served the within

Notice of Decision by (certified) mail upon Ledyard G. Kastner

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

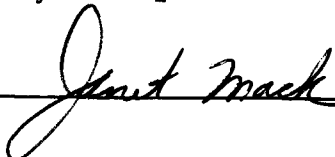
as follows: Ledyard G. Kastner  
356 Ferris Road  
Seaford, New York 11783

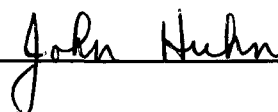
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~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

1 day of September, 1977.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition .

of

LEDYARD G. KASTNER

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)~~ :  
1967, 1968 and 1969

State of New York  
County of **Albany**

John Huhn , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 1 day of September , 19 77, he served the within  
Notice of Decision by (certified) mail upon Denis Broudy, Esq.

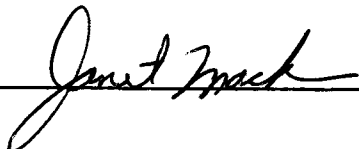
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Denis Broudy, Esq.  
3814 Merrick Road  
Seaford, New York

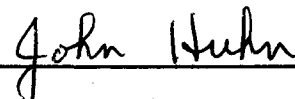
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

1 day of September , 1977.

  
\_\_\_\_\_

  
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STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**September 1, 1977**

**Ledyard G. Kastner  
386 Ferris Road  
Saratoga, New York 11783**

**Dear Mr. Kastner:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

*Joseph Chyrywaty/peg*  
**Joseph Chyrywaty**  
**Head of Bureau**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LEDYARD G. KASTNER	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the Years	:	
1967, 1968 and 1969.	:	

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Petitioner, Ledyard G. Kastner, 356 Ferris Road, Seaford, New York, 11783 filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for 1967, 1968 and 1969. (File No. 9-34509045). A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1976. Petitioner was represented by Denis Broudy, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUE

Did petitioner, Ledyard G. Kastner's, activities during the years 1967, 1968 and 1969 constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law?

1. The Income Tax Bureau issued a Statement of Audit Changes against the petitioner for the years 1967, 1968 and 1969 which held that the income from his activities as an unlicensed engineer was subject to unincorporated business tax. In accordance with the Statement of Audit Changes, a Notice of Deficiency dated November 29, 1971 was issued in the amount of \$1,764.50 which included penalties and interest to that date.

2. Petitioner, Ledyard G. Kastner, is a mechanical engineer holding a Bachelor of Science degree from Washington and Lee University in Virginia.

3. In 1956, petitioner was employed by Universal Transistor Corporation as a research scientific engineer associated with the development and design of night vision equipment for the United States government. Petitioner continued to work for Universal until 1962 when he accepted the position of chief engineer (later vice president of engineering) with Victory Electronic Corporation, where power supply systems were developed and engineered under the night vision program at Fort Belvoir, Virginia, a military facility of the United States government. The purpose of the night vision program was to reduce the size and weight of the night vision equipment and to provide equipment that would operate from a low voltage power source such as a single flashlight cell.

4. When Victory Electronic Corporation left the night vision program, the petitioner went into business for himself to further the research and development in the night vision program. In 1967, petitioner operating as L-K Engineering Company, was awarded the first in a series of contracts with the United States Army Engineer Research and Development Laboratories in which he was obligated to "furnish all engineering, labor tools, equipment, material, supplies, facilities and services necessary during a period of three (3) months supply 868 scientific and technical manhours and fabricate, test and deliver multipliers for use with second generation image intensifier tubes". In the first contract and in subsequent contracts with the United States Engineer Research and Development Laboratories and other contractors having sub-contracts with the United States government, the petitioner was obligated to make, test and deliver multipliers, oscillators or plastic sleeves together with written reports explaining the makeup and function of such parts. These parts were not finished manufactured products, but were prototypes which the petitioner designed and developed in the continued research and development stage of the night vision program for use by the United States government.

5. During the period under review, all of the work performed by the petitioner was in the nature of research and

development. In fact, it was during this period that the petitioner designed and developed his own patented devices which are currently being tested by the United States government at Fort Belvoir.

6. Petitioner employed a full-time engineer and secretary and occasionally, he hired part-time help to wire and solder electronic components and devices.

7. Petitioner's Federal income tax returns for the years 1967, 1968 and 1969 show that his cost of goods sold for such years included beginning and ending inventories as well as merchandise purchased for parts used in production for the respective years of \$ 19,051.00, \$ 14,502.00 and \$ 19,439.00. Total sales were \$ 72,071.00 for 1967, \$ 80,920.00 for 1968 and \$ 92,853.00 for 1969.

#### CONCLUSIONS OF LAW

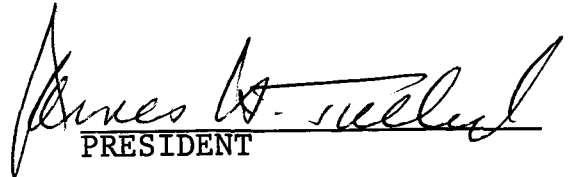
A. That the activities of petitioner, Ledyard G. Kastner, as an engineer during the years 1967, 1968 and 1969 constituted the practice of a profession exempt from the imposition of the unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of Ledyard G. Kastner is granted and the Notice of Deficiency dated November 29, 1971 is cancelled.

DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER