

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT I. KRAUS

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~~ Period(s) :  
1968, 1969, 1970, 1971 and 1973

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 22nd day of September , 1977 , ~~She~~ served the within

Notice of Decision by (certified) mail upon Robert I. Kraus

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

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

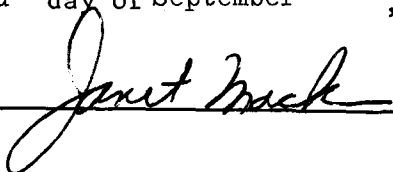
as follows: Robert I. Kraus  
3 Lesley Drive  
Syosset, New York 11791

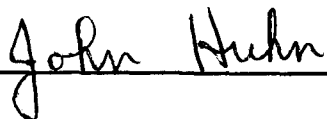
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

22nd day of September , 1977.

  
\_\_\_\_\_

  
\_\_\_\_\_



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227  
**September 22, 1977**

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

**Robert I. Kraus**  
**3 Lesley Drive**  
**Syosset, New York 11791**

**Dear Mr. Kraus:**

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 **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/mey*  
**JOSEPH CHYRYWATY**  
**HEARING EXAMINER**

cc: ~~Examiner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ROBERT I. KRAUS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969, 1970, 1971 and	:	
1973.	:	

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Petitioner, Robert I. Kraus, residing at 3 Lesley Drive, Syosset, New York 11791, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969, 1970, 1971 and 1973. (File No. 11741).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1977 at 1:15 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

#### ISSUE

Whether the income derived from the petitioner's activities was subject to the unincorporated business tax.

FINDINGS OF FACT

1. On November 24, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner for the years 1968 and 1969. Another Notice of Deficiency was issued on the same date for the years 1970, 1971 and 1973. The notices of deficiency were issued on the grounds that the income from petitioner's activities for the years in question was subject to the unincorporated business tax.

2. Petitioner, Robert I. Kraus, is an engineer in the field of numerical controls. He does business under the firm name and style of Numerical Control Associates.

3. Petitioner received a degree in Electrical Engineering from the Massachusetts Institute of Technology and took graduate courses in industrial engineering and in business administration at Columbia and New York Universities.

4. Prior to 1960, petitioner was involved for almost a decade in designing, developing and marketing numerical control machines for the Warner and Swasey Company. In 1960, petitioner created Numerical Control Associates, his own consulting firm, through which he provided consulting services to a variety of business and government clients.

5. During the years at issue, the services which petitioner rendered to his clients dealt with the analyzing and resolving of

productivity and marketing problems. These services included the independent evaluation of manufacturing facilities, equipment, organization, products and plans; the development of effective company objectives; the establishment of a master plan for modernization and increased equipment utilization; the coordination of equipment justification, planning, preparation, acquisition and use; and the indoctrination and implementation of plans, equipment and personnel.

6. Petitioner was instrumental in the creation of professional societies, and in the development of degree programs in the field of numerical controls at various educational institutions.

7. Petitioner has taught, lectured and written in the field of numerical controls. Articles have been written about petitioner's accomplishments and he has been quoted in a variety of trade publications within and without the United States.

#### CONCLUSIONS OF LAW

A. That although the petitioner's activities required the technical and specialized knowledge of engineering principles, the activities and services actually rendered by the petitioner dealt with industrial and management consulting. Accordingly, the petitioner's activities as a consultant, during the years 1968, 1969, 1970, 1971 and 1973, did not constitute the practice of a profession

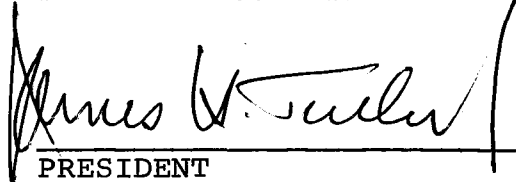
exempt from the imposition of the unincorporated business tax, in accordance with the meaning and intent of section 703(c) of the Tax Law and 20 NYCRR 203.11.

B. That the petitioner's activities as a consultant during the years 1968, 1969, 1970, 1971 and 1973 constituted the carrying on of an unincorporated business, and that the income derived therefrom during said years is subject to the unincorporated business tax in accordance with the meaning and intent of Article 23 of the Tax Law.

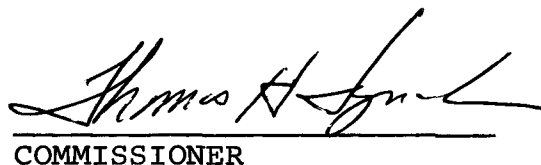
C. That the petition of Robert I. Kraus is denied and the notices of deficiency issued on November 24, 1975, in the total amount of \$1,835.49, are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
September 22, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER