

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MITCHELL J. BOGDANOWICZ

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(§) 23 of the :
Tax Law for the Year(s) or Period(s) :
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 17th day of February , 1978 , ~~she~~ served the within
Notice of Decision by (certified) mail upon Stanley Roth, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Stanley Roth, CPA
501 Fifth Avenue
New York, NY 10017
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

17th day of February , 1978

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MITCHELL J. BOGDANOWICZ

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 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 14th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon Mitchell J. Bogdanowicz

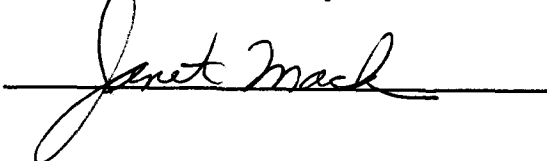
~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mitchell J. Bogdanowicz
435 West 57th Street
New York, NY 10019

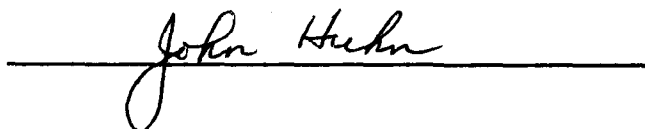
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~XXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

17th day of February, 1978.







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

February 17, 1978

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

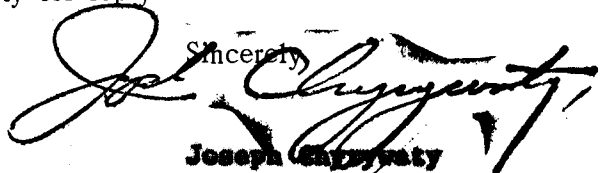
Mitchell J. Bogdanowicz
435 West 57th Street
New York, NY 10019

Dear Mr. Bogdanowicz:

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 Capovvato
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MITCHELL J. BOGDANOWICZ : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1968 and 1969. :
:

Petitioner, Mitchell J. Bogdanowicz, residing at 435 West 57th Street, New York 10019, 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 and 1969 (File No. 12534).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1977 at 9:15 A.M. Petitioner appeared by Stanley Roth, C/P/A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities in the fields of electronics, mechanics and optics during the years 1968 and 1969 constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner filed New York personal income tax returns for the years 1968 and 1969. He did not file unincorporated business tax returns for said years. The Income Tax Bureau contended that petitioner's activities constituted the carrying on of an unincorporated business. On March 31, 1975, it issued a Notice of Deficiency in the amount of \$1,707.97, plus \$532.92 in penalty and \$582.57 in interest for a total due of \$2,823.46.

2. Petitioner contended that he was a self-employed research engineer, specializing in the fabrication of motion picture equipment, as well as an engineer recognized in the fields of electronics, mechanics and optics.

3. In the years 1968 and 1969, petitioner's place of business contained lathes, presses, drills and technical equipment. He repaired cameras and also adapted and reworked motion picture cameras to fit his customers' needs. He put together computer kits and designed a movie projector.

4. Petitioner did not have a college education. He had no license to practice engineering. Therefore, his activities were not controlled by established standards of conduct or ethics. Petitioner's knowledge was self-taught through the study of technical books and experience.

5. Petitioner relied on his accountant's advice in not filing unincorporated business tax returns for the years 1968 and 1969.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Mitchell J. Bogdanowicz, in the fields of electronics, mechanics and optics during the years 1968 and 1969, 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.

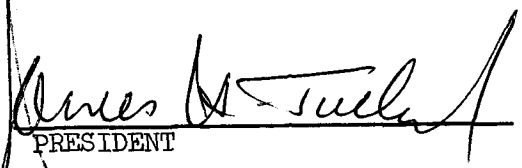
B. That the aforesaid activities of petitioner, Mitchell J. Bogdanowicz, during the years 1968 and 1969 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

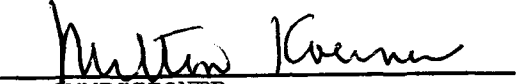
C. That petitioner's failure to file unincorporated business tax returns for said years was due to reasonable cause rather than willful neglect. Therefore, the penalties imposed under section 685 of the Tax Law are cancelled.

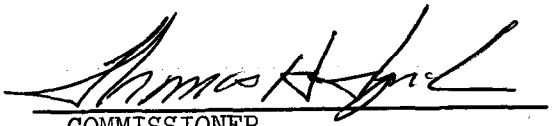
D. That except as granted in Conclusion of Law "C," above, the petition of Mitchell J. Bogdanowicz is denied and the Notice of Deficiency issued March 31, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER