

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROLAND E. GREAVES

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) ~~xxx Period(s) x~~ :
1967 through 1970.

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 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon Roland E. Greaves

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

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

as follows: Roland E. Greaves
1036 Harvard Street
Rochester, New York 14610

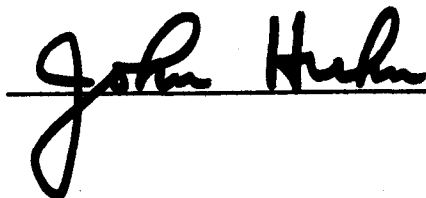
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20th day of September , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROLAND E. GREAVES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (2) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1967 through 1970.

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 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon D. E. Colway, CPA

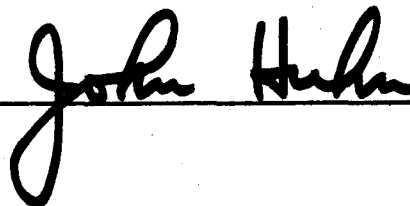
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: D. E. Colway, CPA
c/o Ernst and Ernst
1350 Midtown Tower
Rochester, New York 14604
and by depositing same enclosed in a postpaid properly addressed 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

20th day of September , 1978







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 20, 1978

Mr. Roland E. Greaves
1036 Harvard Street
Rochester, New York 14610

Dear Mr. Greaves:

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 (a) **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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROLAND E. GREAVES	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967, 1968, 1969 and 1970.	:	
	:	

Petitioner, Roland E. Greaves, 1036 Harvard Street, Rochester, New York 14610, 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 1967, 1968, 1969 and 1970 (File No. 11342).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 10, 1977 at 1:15 P.M. Petitioner appeared pro se and by David E. Colway, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner's activities during the years 1967 through 1970 as a food service facilities consultant constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner filed New York State personal income tax returns for the years 1967, 1968, 1969 and 1970, in which he indicated his occupation to be that of a food consultant and that his business income was derived from services performed as a consultant. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. It issued a Notice of Deficiency against petitioner on February 26, 1973 for the years 1967 through 1970 in the amount of \$1,775.23 in unincorporated business tax, plus \$569.14 in penalty and \$247.85 in interest, for a total due of \$2,592.22.

3. Petitioner contended that during the years 1967 through 1970 he was performing the same services as those performed by an architect or engineer and, therefore, he was engaged in the practice of a profession exempt from the imposition of unincorporated business tax.

4. Petitioner completed a two-year course of study, receiving a certificate in architecture from Rankin College in 1948. He has subsequently worked as either an employee or (in an independent capacity) as a food-service equipment consultant. He was a member of the National Society of Food Facilities Consultants and was recognized as an expert in his field.

5. During the years 1967 through 1970, petitioner performed services as an independent contractor on a fee basis, primarily for architectural firms. He was engaged by his principals to design food-service facilities for industrial and institutional projects such as hospitals and schools. Petitioner determined the demands of his principals' clients' in regard to feeding a certain number of workers

or patients, so that he could ascertain the basic equipment and utility requirements. He prepared specifications of the equipment needed for purposes of competitive bidding. He selected the equipment, including tables, chairs, trays, stands, ovens and refrigerators. He laid out the equipment within floor plans prepared by an architect. The overall floor plans were finally approved by the architect.

6. There is no license required for the services performed by petitioner. He occasionally hired assistants who were not licensed. The architectural certificate earned at Rankin College is not sufficient to enable petitioner to obtain an architectural license.

7. Petitioner relied on his accountant for the proper filing of his tax returns.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Roland E. Greaves, as a food service facilities consultant during the years 1967, 1968, 1969 and 1970, 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, Roland E. Greaves, during said years constituted the carrying on of an unincorporated business and that his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

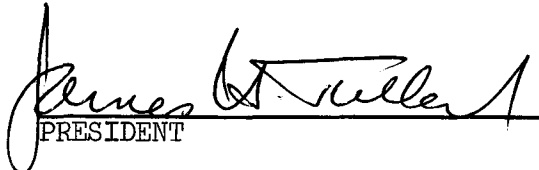
C. That petitioner had reasonable cause for his failure to file unincorporated business tax returns for the years in issue and, therefore, all penalties are cancelled.

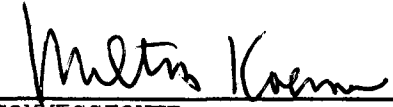
D. That the petition of Roland E. Greaves is granted to the extent of cancel-
ling all penalties; the Income Tax Bureau is hereby directed to so modify the
Notice of Deficiency issued February 26, 1973 and that, except as so granted, the
petition is in all other respects denied.

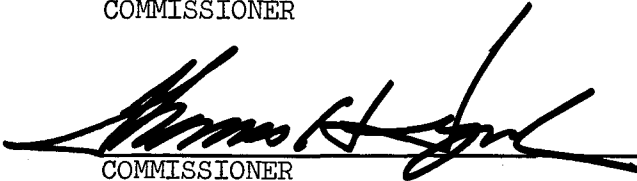
DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER