

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

ESTATE OF ARTHUR P. RECKSEIT
(Ronda Reckseit, Executrix) and
RONDA RECKSEIT, Individually
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) ~~or Period(s)~~
1968, 1969 and 1970.

AFFIDAVIT OF MAILING

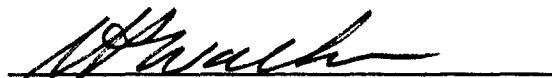
State of New York
County of Albany

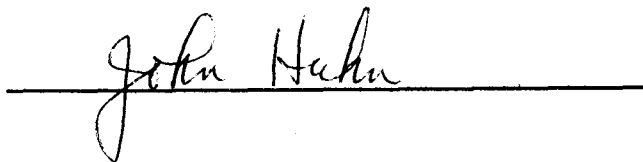
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1978, he served the within
Notice of Decision by (certified) mail upon Estate of Arthur P.
Reckseit & Ronda Reckseit, Individually
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Estate of Arthur P. Reckseit
as follows: Ronda Reckseit, Executrix and
Ronda Reckseit, Individually
165 Philips Lane
Hewlett Neck, New York 11598
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

25th day of August, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

ESTATE OF ARTHUR^{of} P. RECKSEIT
(Ronda Reckseit, Executrix) and
RONDA RECKSEIT, Individually
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) ~~or 23100(x)~~
1968, 1969 and 1970.

AFFIDAVIT OF MAILING


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 25th day of August, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Stanley Ross
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Stanley Ross
M. S. Scheiber & Company
Certified Public Accountants
271 Madison Avenue
New York, New York 10016
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

25th day of August, 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

August 25, 1978

**Estate of Arthur P. Reckseit
Ronda Reckseit, Executrix and
Ronda Reckseit, Individually
165 Philips Lane
Hewlett Neck, New York 11598**

Dear Mrs. Reckseit:

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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
ESTATE of ARTHUR P. RECKSEIT	:	DECISION
(Ronda Reckseit, Executrix) and	:	
RONDA RECKSEIT, Individually	:	
for Redetermination of Deficiencies or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years	:	
1968, 1969 and 1970.	:	

Petitioners, Estate of Arthur P. Reckseit (Ronda Reckseit, Executrix) and Ronda Reckseit, individually, 165 Philips Lane, Hewlett Neck, New York 11598, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970 (File No. 00279).

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 August 30, 1977 at 1:15 P.M. The petitioner appeared by Stanley Ross of M.S. Scheiber & Company, CPA's. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner Arthur Reckseit's activities constituted the practice of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Arthur P. and Ronda Reckseit, filed New York State income tax resident returns for the years 1968, 1969 and 1970, wherein they reported business income from the activities of Arthur P. Reckseit as a consulting industrial engineer. Unincorporated business tax returns were not filed for these years upon the advice of their accountant.
2. Petitioner Arthur P. Reckseit died on October 12, 1971.
3. On September 25, 1972, the Income Tax Bureau issued a Notice of Deficiency for 1968 and 1969 against petitioners, Arthur P. and Ronda Reckseit. A second Notice of Deficiency was issued on September 25, 1972 against petitioner Arthur P. Reckseit for 1970. Both of the above deficiencies asserted unincorporated business tax on the income Arthur P. Reckseit derived from his activities as a consulting industrial engineer.
4. Although joint New York State income tax resident returns were filed for the years 1968, 1969 and 1970, petitioner Ronda Reckseit was a full-time housewife and did not participate in petitioner Arthur P. Reckseit's business activities.
5. Petitioner Arthur P. Reckseit received a Bachelor of Science degree in industrial engineering from Syracuse University in 1949.
6. Arthur P. Reckseit conducted business under various labels such as "industrial engineer", "management consultant" and "consulting industrial engineer." However, petitioners' representative contended that all of Arthur P. Reckseit's income was derived from his activities as an industrial engineer who specialized mainly in industrial design.

7. In a letter dated February 26, 1971, Arthur P. Reckseit described the nature of his activities as being an "industrial engineering service" which consisted of the preparation of plans for buildings (including modernization and renovation), with specifications for plot plans, structure concepts, floor-loading requirements, room plans, electrical plans, lighting layouts, security plans, heating, ventilating, and air-conditioning plans. His activities also involved designing systems for storage facilities, production facilities, automated conveyor facilities and automated production equipment.

8. The Income Tax Bureau recommended that the penalties imposed pursuant to section 685(a) of the Tax Law for the year 1968 and section 685(a)(1) and 685(a)(2) of the Tax Law for the year 1969 be cancelled for reasonable cause.

CONCLUSIONS OF LAW

A. That the nature of the activities performed by Arthur P. Reckseit and the fees derived therefrom could not be identified, distinguished, or segregated as being that of an industrial designer (a profession exempt from unincorporated business tax) or that of an industrial engineer subject to unincorporated business tax. Accordingly, an individual carrying on an unincorporated business and practicing a profession is subject to the unincorporated business tax on the entire income of the business and profession combined, since the income derived from each activity or combination of activities could not be individually identified and segregated in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of the Estate of Arthur P. Reckseit (Ronda Reckseit, Executrix) and Ronda Reckseit, individually, is granted to the extent of eliminating Ronda Reckseit, individually, from the Notice of Deficiency for 1968 and 1969 issued September 25, 1972. That said petition is further granted to the extent of cancelling the penalties asserted pursuant to section 685(a) of the Tax Law for 1968 and 685(a)(1) and 685(a)(2) of the Tax Law for 1969, as the failure to file unincorporated business tax returns was due to reasonable cause rather than willful neglect; therefore the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency for 1968 and 1969, issued September 25, 1972 and that, except as so granted, the petition is in all other respects denied.

C. That the petition of the Estate of Arthur P. Reckseit (Ronda Reckseit, Executrix) is denied and the Notice of Deficiency issued September 25, 1972 for 1970 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER