

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition .

of

JULIUS AND ANGELA N. SURKIS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(8)~~ 23 of the :
Tax Law for the Year ~~(8) XXXXXXXX~~ 1973. :

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that

~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December , 1978, ~~she~~ she served the within

Notice of Decision by (certified) mail upon Julius & Angela N. Surkis

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

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

as follows: Julius & Angela N. Surkis
56 Garden Place
Brooklyn, New York 11201

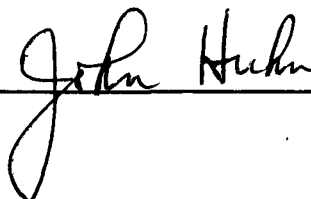
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~XXXXXX~~ 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

13th day of December , 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

December 13, 1978

Julius & Angela N. Surkis
56 Garden Place
Brooklyn, New York 11201

Dear Mr. & Mrs. Surkis:

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 CHYRYWAT
HEARING EXAMINER

~~XX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JULIUS AND ANGELA N. SURKIS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1973.	:	

Petitioners, Julius and Angela N. Surkis, 56 Garden Place, Brooklyn, New York 11201, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1973 (File No. 14017).

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 September 27, 1977 at 2:45 P.M. Petitioner appeared pro se and for his wife, petitioner Angela N. Surkis. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether petitioner Julius Surkis' income derived from his business activities is subject to unincorporated business tax.

II. Whether petitioner Julius Surkis' activities constitute the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Julius and Angela N. Surkis, filed a joint New York State income tax resident return for 1973. On it, they reported wage income totaling \$25,418.10, which consisted of salary income of \$18,818.10 and fees of \$6,600.00.

2. Petitioner Julius Surkis filed a New York State unincorporated business tax return for 1973 and reported a net profit of \$9,230.00 from his research activities.

3. On audit, the Income Tax Bureau issued a Statement of Refund Adjustment dated October 16, 1974, whereby the fees of \$6,600.00 were held subject to unincorporated business tax. As a result, the refund claimed on the personal income tax return was reduced.

4. Petitioner Julius Surkis holds a Ph.D in Operations Research from the Polytechnic Institute of Brooklyn, an M.S. in Operations Research and Management Science from Stevens Institute of Technology, another M.S. in Mechanical Engineering from Michigan State University and a B.S. in Civil Engineering from Robert College, Istanbul, Turkey. His research interests include developing models of urban and health care delivery systems, simulation theory and quantitative applications in the area of finance. He has published in these areas in academic and scientific journals.

5. Petitioner Julius Surkis is an associate professor in the Graduate School of Business Administration at Rutgers University. During the final half of 1973, he was an assistant professor in the Industrial and Management Engineering Department at Columbia University. In addition, petitioner taught courses at the Polytechnic Institute of Brooklyn. These three organizations paid petitioner salaries totaling \$18,818.10. Prior to his academic career, petitioner had 10 years of full-time industrial experience, the last of which was as manager of Management Science Technology, UNIVAC, Division of Sperry Rand Corporation.

6. Pitney Bowes, Inc. retained petitioner Julius Surkis as a researcher, for the purpose of developing a theoretical mathematical approach to a specialized reliability problem involving a new optical scanner system. The theoretical research also involved the design and development of the optical scanner system. His activities included conducting seminars in simulation theory for other researchers employed by Pitney Bowes, Inc., which provided a foundation that would assist them in following, developing and implementing petitioner's theoretical work. This seminar was substantially identical to courses taught by petitioner at Columbia and Rutgers.

7. Pitney Bowes, Inc. paid petitioner Julius Surkis \$13,800.00 for his services as a researcher during 1973. This compensation represented the full amount of gross receipts reported on the New York State unincorporated business tax return filed for 1973.

In addition, he was paid a fee of \$3,000.00 for his services as a seminar lecturer, which was included in the \$6,600.00 in fees reported on his personal income tax return.

8. Petitioner Julius Surkis conducted a similar graduate-level seminar at Western Electric Graduate Education Center during 1973 and received \$3,600.00, which was also included in the \$6,600.00 reported in fees on his personal income tax return. However, he did not perform research services for the Western Electric Graduate Education Center.

9. Petitioner Julius Surkis contended that his activities as a researcher and as a seminar instructor constituted the practice of a profession exempt from unincorporated business tax. He also contended that although he labelled himself a consultant on the unincorporated business tax return filed for 1973, he did not perform services as such.

10. Capital was not a material income producing factor and all income for the taxable year was derived from personal services rendered by petitioner.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner Julius Surkis constituted two occupations in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, was used by its practical application to the affairs of others, either by advising, guiding or

teaching them, and in serving their interest or welfare in the practice of an art or science founded on it. Accordingly, petitioner's attainments in professional knowledge, along with the nature and character of the services performed during 1973 constituted the practice of the professions of engineering and teaching, which are exempt from unincorporated business tax in accordance within the meaning and intent of section 203(c) and 20 NYCRR 203.11(b)(1).

B. That the petition of Julius and Angela N. Surkis is granted. The Income Tax Bureau is hereby directed to refund the sum of \$411.18, together with such interest as may be lawfully owing.

DATED: Albany, New York

December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER