

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NISSIM ZELOUF

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) :
1967, 1968, and 1969

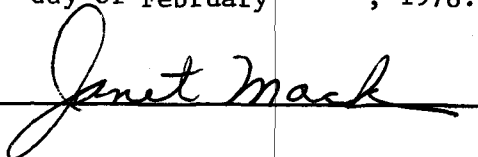
State of New York
County of Albany

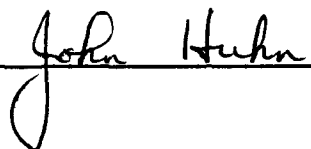
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1978, she served the within
Notice of Decision by (certified) mail upon Robert Florsheim
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert Florsheim, Esq.
10 Columbus Circle
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 (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

14th day of February, 1978.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NISSIM ZELOUF	:	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 and 1969.	:	

Petitioner, Nissim Zelouf, residing at 70-20 108th Street, Forest Hills, New York 11375, 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 and 1969 (File No. 14228).

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 27, 1977 at 10:45 A.M. Petitioner appeared by Robert Florsheim, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner's activities during the years 1967, 1968 and 1969 constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner, Nissim Zelouf, filed New York State personal income tax returns for the years 1967, 1968 and 1969, in which he reported that he was a building estimator. 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 and that the income derived therefrom was subject to unincorporated business tax. A Notice of Deficiency was issued on January 31, 1972 in the amount of \$2,990.10, plus penalty of \$883.64 and interest of \$419.60, for a total due of \$4,293.34.

2. In 1943, petitioner graduated from the American University of Beirut with a degree in civil and structural engineering. He worked in Iraq and Israel as a licensed engineer until 1957, when he was admitted to the United States as a non-quota, first preference immigrant on the basis of his professional standing.

3. During the years 1967, 1968 and 1969, petitioner worked on large construction projects for governmental agencies, for the military and for corporate clients, all of which required formal approval of his qualifications in the field of engineering.

4. The services that petitioner performed required an engineering education and many years of experience as an engineer.

Petitioner was required to find faults in the building plans drawn by the original engineers, correct these faults and, if necessary, produce completely alternative plans.

5. During the years in issue, the petitioner was an engineer. Petitioner's title of "building estimator", or the designation of his work as being that of a cost engineer and cost consultant were not indicative of the engineering work that he was actually involved in.

6. More than 80% of petitioner's gross income was derived from personal services rendered by him. Capital was not a material income-producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Nissim Zelouf, during the years 1967, 1968 and 1969, constituted 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.

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Tax under Article 23 of the Tax Law	:	
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CONCLUSIONS OF LAW

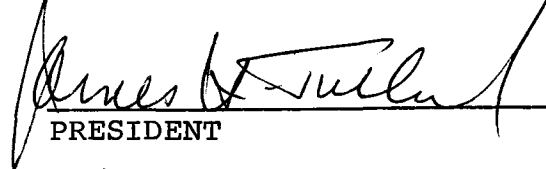
A. That the activities of petitioner, Nissim Zelouf, during the years 1967, 1968 and 1969, constituted the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

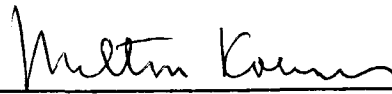
B. That the petition of Nissim Zelouf is granted and the Notice of Deficiency issued January 31, 1972 is cancelled.

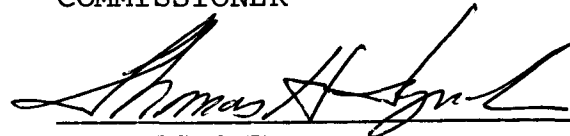
DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER