

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Edward E. Coleman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Year 1970. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Edward E. Coleman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward E. Coleman
30 Park Ave., Apt. #4M
New York, NY 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Unincorporated Business Tax :

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for the Year 1970. :

State of New York

County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Marcia Z. Hefter the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Marcia Z. Hefter
108 E. Main St., P.O. Box 268
Riverhead, NY 11901

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
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Edward E. Coleman :

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for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Year 1971. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Edward E. Coleman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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New York, NY 10016

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Sworn to before me this
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Edward E. Coleman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Year 1971. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Marcia Z. Hefter the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Marcia Z. Hefter
108 E. Main St., P.O. Box 268
Riverhead, NY 11901

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
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 16, 1979

Edward E. Coleman
30 Park Ave., Apt. #4M
New York, NY 10016

Dear Mr. Coleman:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Marcia Z. Hefter
108 E. Main St., P.O. Box 268
Riverhead, NY 11901
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
EDWARD E. COLEMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1970 and 1971.	:	

Petitioner, Edward E. Coleman, 30 Park Avenue, New York, New York 10016, filed a petitioner for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970 and 1971 (File Nos. 13920 and 13921).

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 March 5, 1979 at 9:15 A.M. The petitioner appeared by Marcia Z. Hefter, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether income from petitioner's activities as a construction consultant is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Edward E. Coleman, and Hazel Coleman, his wife, timely filed New York State Income Tax Resident Returns for the years 1970 and 1971, on which petitioner, Edward E. Coleman, reported business income from his activities as a construction consultant. On the advice of his attorney, petitioner did not file unincorporated business tax returns for these years.

2. On January 27, 1975, the Income Tax Bureau issued two notices of deficiency against petitioner imposing \$468.56 in unincorporated business tax, plus penalty of \$213.18 and interest of \$106.34, for a total due of \$788.08 for 1970 and \$1,166.00 in unincorporated business tax, plus penalty of \$460.57 and interest of \$194.68, for a total due of \$1,821.25 for 1971. Penalties were imposed in accordance with sections 685(a)(1) and 685(a)(2) of the Tax Law. The notices were issued on the grounds that petitioner's activities as a construction consultant were subject to unincorporated business tax.

3. Petitioner, Edward E. Coleman, has a bachelor of arts degree with a major in mathematics, economics and history. Petitioner has also taken courses in civil engineering, but has never obtained a degree in that field.

4. Petitioner, Edward E. Coleman, held various positions in the construction industry from March, 1952 through June, 1969, which allowed him to obtain a broad knowledge of construction practices.

5. In June, 1969, petitioner was retained by the Metropolitan Life Insurance Company ("Metropolitan") as a construction consultant in its real estate investment division. Petitioner's duties consisted of setting up operational procedures, providing technical resources, and monitoring its construction projects, in addition to supervising the design, budgeting and contractual negotiations of a project.

6. Petitioner contended that he was a "pioneer" in his field, which subsequently became known as "construction management" within the construction and real estate investment industries, as well as within universities and other educational institutions offering degrees in civil engineering. Petitioner reasoned that although he was not an engineer, he was a professional in the field of construction management, and possessed expertise in civil engineering, surveying, architecture, law and accounting.

7. Petitioner was compensated by Metropolitan on a per diem basis, plus "reimbursable expenses", as an independent contractor. His income was derived totally from personal services rendered and capital was not a material income producing factor.

8. Petitioner continued to render services for Metropolitan until June, 1971, when he became employed as vice-president of Crow, Pope and Land Enterprises, Inc., a general developer for commercial and residential property.

CONCLUSIONS OF LAW

A. That the word "profession" implies attainments in professional knowledge in some department of science or learning and not mere skill and application of knowledge. The performing of services dealing with the conduct of business itself, including the promotion of sales or services of such business and consulting services, does not constitute the practice of a profession even though the services involve the application of a specialized knowledge. Although the petitioner's activities as a construction consultant require special knowledge and skill, the application and nature of these attributes does not constitute a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Edward E. Coleman, during the years 1970 and 1971, constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law and that the income derived therefrom was subject to the imposition of unincorporated business tax under section 701 of the Tax Law.

C. That the petition of Edward E. Coleman is granted to the extent that the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are cancelled for reasonable cause.

D. That the Income Tax Bureau is hereby directed to accordingly modify the two Notices of Deficiency issued January 27, 1975, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 16 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER