

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES GEORGE

AFFIDAVIT OF MAILING

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) ~~xxx Period(s)~~ :
1964, 1965 and 1966

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 24th day of January, 1979, she served the within
Notice of Decision by (certified) mail upon Charles George
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Charles George
237 Fountain Road
Englewood, NJ
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~~
~~xxx 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

24th day of January, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES GEORGE

AFFIDAVIT OF MAILING

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) ~~1964, 1965 and 1966~~ :
1964, 1965 and 1966

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 24th day of January , 1979 , he served the within
Notice of Decision by (certified) mail upon Harry Gross, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harry Gross, CPA
L. Handelsman & Co.
222 Station Plaza North
Mineola, NY 11501
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

24th day of January , 1979.

Marilyn J. Papineau

John Huhn



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

January 24, 1979

Charles George
237 Fountain Road
Englewood, NJ


Dear Mr. George:

Please take notice of the **Notice of Decision**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **(x) 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 **four 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	:	
CHARLES GEORGE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964, 1965 and 1966.	:	

Petitioner, Charles George, 237 Fountain Road, Englewood, New Jersey, 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 1964, 1965 and 1966 (File No. 00243).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 16, 1977 at 9:30 A.M. Petitioner appeared by Harry Gross, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a management consultant -advisor were subject to unincorporated business tax, within the meaning and intent of section 703(a) of the Tax Law.

II. Whether petitioner's activities as a management consultant -advisor constituted the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law.

III. Whether the salaries paid to petitioner constituted unincorporated business gross income subject to the imposition of unincorporated business tax, in accordance with section 701(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Charles George, and his wife Martha George, filed separate New York State income tax returns on Form IT-208 for 1964, 1965 and 1966. Petitioner also filed unincorporated business tax returns on Form IT-202 for 1964 and 1965, but did not file an unincorporated business tax return for 1966.

2. On September 29, 1969, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Charles George, asserting unincorporated business tax for 1964, 1965, and 1966 of \$2,536.04, plus penalty of \$505.60 and interest of \$420.12, for a total of \$3,461.76. The Notice asserted unincorporated business tax, based on petitioner's salary income for said years. The salary income for 1964 was deemed to be interrelated with his activities as a management consultant, while the salary income received for 1965 and 1966 was deemed to be for services rendered as an employee.

3. Attached to petitioner's 1964 New York State resident income tax return was a copy of his 1964 New Jersey Nonresident Emergency Transportation Tax Return. The latter return indicated salary earned

in New Jersey of \$6,923.52 and New Jersey tax withheld in the sum of \$385.44. A copy of the New Jersey withholding tax statement was not attached to the return. Petitioner, Charles George, stated that he was paid a salary as an executive of the Telerad Division of Lionel Corporation. A copy of a contract between Charles George and the Lionel Corporation, dated January 1, 1962, was submitted. By its terms, it converted a prior employment agreement between the parties to one wherein Mr. George was retained in a consulting and advisory capacity for the period January 2, 1962 to December 31, 1965.

4. Petitioner was employed as president of International Breweries, Inc. for a period of time in 1965 and thereafter became a consultant -advisor of said corporation. He was subsequently employed by the Lee Myles Corporation in 1965 and in 1966 he became president of said corporation. The evidence and testimony submitted indicates that sufficient direction and control was exercised over petitioner's time and efforts by International Breweries, Inc. (prior to September 1, 1965) and by Lee Myles Corporation (after September 1, 1965) so as to establish an employee/employer relationship.

5. The business income reported on petitioner's personal income tax returns was based on consultant agreements with Lionel Corporation, International Breweries, Inc. and Servo Corporation of America. These were agreements wherein petitioner was to consult and advise, upon request and for a limited number of days per year, on operations, acquisitions, and sales and/or management problems.

6. Petitioner, Charles George, did not file an unincorporated business tax return for 1966 because he considered himself to be a professional exempt from the unincorporated business tax.

7. Petitioner is not licensed as a professional engineer by the New York State Education Department, nor does he have a degree in engineering.

8. Petitioner studied metallurgy at Columbia University, but was not awarded a degree. He later worked for an aircraft company as a metallurgist and then managed the Telerad Manufacturing Corporation, a corporation which he formed. At the end of 1960, he sold his interest in said corporation to Lionel Corporation, but continued as president of the Telerad corporation until his employment agreement was converted (by contract) to a consulting agreement as of January 2, 1962.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Charles George, as a business consultant and/or advisor during the years 1964, 1965 and 1966, did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the salary reported on petitioner's 1964 personal income tax return was for services rendered by him as a consultant under contract and is, therefore, subject to unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

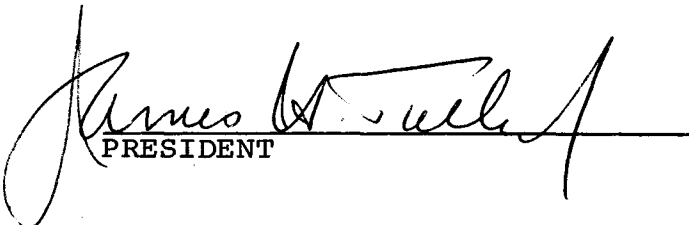
C. That the salary income reported on petitioner's 1965 and 1966 personal income tax returns was in fact, salary income received as an employee not subject to unincorporated business tax.

D. That the petition of Charles George is granted to the extent that the salary income received as an employee during 1965 and 1966 is not subject to the imposition of unincorporated business tax; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued September 29, 1969 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

January 24, 1979


PRESIDENT


COMMISSIONER


COMMISSIONER