

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Leo Murphy

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 Years 1967 - 1969. :

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 9th day of November, 1979, he served the within notice of Decision by certified mail upon Leo Murphy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

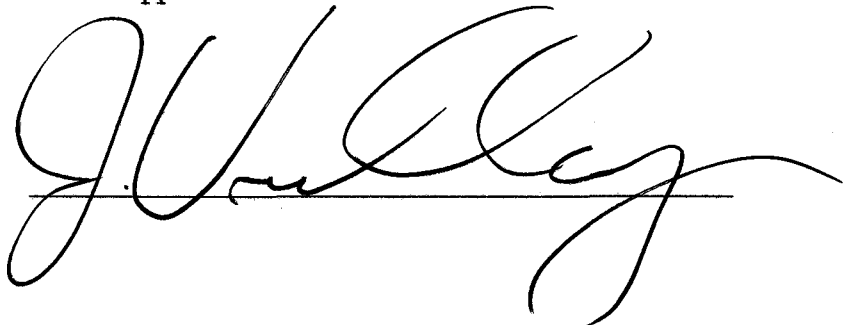
Leo Murphy  
160 E. 48th St., Apt.13J  
New York, NY 10017

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  
9th day of November, 1979.

Joanne Knapp



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

November 9, 1979

Leo Murphy  
160 E. 48th St., Apt.13J  
New York, NY 10017

Dear Mr. Murphy:

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

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LEO MURPHY	:	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.	:	

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Petitioner, Leo Murphy, 160 East 48th Street, Apt. 13-J, New York, New York 10017, 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. 14081).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 13, 1978 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities as a management consultant during 1967, 1968 and 1969 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Leo Murphy, filed New York State resident income tax returns for 1967, 1968 and 1969, on which he reported income received



as a management consultant. He did not file unincorporated business tax returns for said year.

2. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting unincorporated business tax of \$3,234.36, plus penalties imposed under section 685(a) of the Tax Law of \$1,194.49 and interest of \$1,244.83, for a sum of \$5,673.68. Said Notice was issued on the grounds that petitioner's activities constituted the carrying on of an unincorporated business and that the income therefrom was subject to unincorporated business tax.

3. Petitioner, Leo Murphy, was awarded a degree in mechanical engineering.

4. During the years at issue, he rendered services to his clients dealing with advanced planning and the application of technology. The services included the independent evaluation of company facilities, equipment, personnel, the development of objectives, the establishment of a master plan, the integration, classification, interpretation and coordination of diverse applied sciences, and the introduction and implementation of said sciences.

5. Petitioner contended that his approach to planning and to the application of technology was a professional activity, since it was based on specialized knowledge in more than one field of science and/or learning.

He also contended that his work could not be done by any ordinary management consultant, and that his clients were highly technical companies and not consumer-oriented.



CONCLUSIONS OF LAW

A. That although petitioner's consulting activities involved the application of a specialized knowledge of engineering principles, such activities did not constitute the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law and 20 NYCRR 203.11.

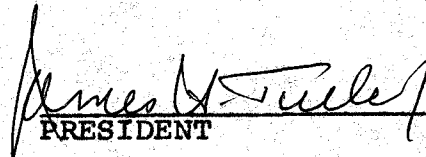
B. That petitioner's activities as a consultant during 1967, 1968 and 1969 constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax, within the meaning and intent of section 701 of the Tax Law.

C. That the petition of Leo Murphy is denied and the Notice of Deficiency issued January 26, 1976 is sustained, together with such additional interest and penalties as may be lawfully owing.

DATED: Albany, New York

NOV 9 1979


STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER

I dissent. Petitioner is a professional.

  
Commissioner

NOV 9 1979

W. J. ...