

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE J. and DOROTHY C. GREER

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) ~~XXXXXX~~ :
1967, 1968 and 1969.

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 14th day of February, 1979, ~~he~~ served the within
Notice of Decision by (certified) mail upon George J. & Dorothy C. Greer
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: George J. & Dorothy C. Greer
1123 Douglas Place
Seaford, New York 11783
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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

14th day of February, 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

February 14, 1979

George J. & Dorothy C. Greer
1123 Douglas Place
Seafood, New York 11783


Dear Mr. & Mrs. Greer:

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 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 CHYNOWETH
HEARING EXAMINER

~~Procedural Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE J. and DOROTHY C. GREER	:	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.	:	

Petitioners, George J. and Dorothy C. Greer, 1123 Douglas Place, Seaford, New York 11783, 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. 00239).

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 March 9, 1978 at 1:15 P.M. Petitioner George J. Greer appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner George J. Greer's activities as a sales representative during 1967, 1968 and 1969 constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law, or whether he was engaged in the carrying on of an unincorporated business as a sales representative and, thus, subject to the imposition of unincorporated business tax in accordance with section 701(a) of the Tax Law.

II. Whether, if petitioner was engaged in the carrying on of an unincorporated business, he was entitled to claim a deduction for his wife's services during the years at issue.

III. Whether, if petitioner was engaged in the carrying on of an unincorporated business, he could allocate a portion of his business income to sources outside New York State.

FINDINGS OF FACT

1. Petitioners, George T. and Dorothy C. Greer, timely filed New York State personal income tax returns for 1967, 1968 and 1969. On said tax returns, petitioner George J. Greer reported his occupation to be that of a sales or manufacturer's representative, deriving his business income as such. His wife's occupation was reported to be a housewife or homemaker. Unincorporated business tax returns were not filed by petitioners for said years.

2. The Income Tax Bureau contended that petitioner George J. Greer's activities did not constitute the practice of a profession as an engineer and thus he was engaged in the carrying on of an unincorporated business. Accordingly, it issued a Notice of Deficiency on May 22, 1972 in the amount of \$2,221.71 in unincorporated business tax, plus \$617.07 in penalty (pursuant to sections 685(a) and 685(a)(1) and (a)(2) of the Tax Law) and \$416.69 in interest, for a sum of \$3,255.47.

3. Petitioner George J. Greer graduated from Cooper Union in 1950 with a Bachelor of Science degree in electrical engineering. In 1953 he earned a Master's degree in management and finance at New York University.

4. Petitioner was a sales representative for three principals during 1967, 1968 and 1969. He conducted business under the name "Greer Technical Sales." His function was to sell the products of his principals. An engineering background was required in his work. He sold sophisticated electronic space-age equipment for one of his principals, electrical generators for another and military electrical equipment for a third. Petitioner was assigned a territory by his principals. There was little control exercised over his activities. The remuneration for his efforts on behalf of his principals was a percentage of his sales. Petitioner did not submit any documentary or other satisfactory evidence which would show that he was engaged in the practice of a profession as an engineer, rather than in the use of his engineering background to further the sale of equipment.

5. Petitioner contended that his wife worked at home 15 to 20 hours a week filing papers, doing some typing and taking telephone messages. Petitioner did not submit any other evidence to support his contention. He did not pay her any wages during the years at issue.

6. Petitioner contended that he traveled extensively outside New York State and that 75% of his income was derived from sources outside New York State. Petitioner did not have an office outside New York State.

7. Petitioner contended that in 1966 or early 1967, he was advised by the New York State Income Tax Bureau, Nassau County District Office, that he was engaged in the practice of a profession and was, therefore, exempt from unincorporated business tax.

CONCLUSIONS OF LAW

A. That the activities of petitioner George J. Greer as a sales representative during 1967, 1968 and 1969, although requiring special knowledge, did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner George J. Greer constituted the carrying on of an unincorporated business; thus, the income derived therefrom was subject to unincorporated business tax, in accordance with section 703(a) of the Tax Law.

C. That petitioner George J. Greer failed to sustain the burden of proof required (in accordance with section 689(e) of the Tax Law) to show that his wife was a bona fide employee or that he incurred any expenses connected with the alleged services she performed.

D. That petitioner George J. Greer could not allocate his income to sources outside New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

E. That petitioner George J. Greer's failure to file unincorporated business tax returns for 1967, 1968 and 1969 was due to reasonable cause and not due to willful neglect; therefore, all penalties are cancelled.


F. That the petition of George J. and Dorothy C. Greer is granted to the extent that all penalties are cancelled; that the Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued May 22, 1972, but that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER