

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK J. LOCASTRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(xx)~~ 23 of the :  
Tax Law for the Year(s) ~~xxxxxx~~ :  
1971 and 1972.

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 Frank J. Locastro

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Frank J. Locastro  
140 Dutchess Avenue  
Staten Island, NY 10304

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)~~  
~~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, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK J. LOCASTRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1971 and 1972.

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 John Passarello, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John Passarello, Esq.  
1142 Hylan Boulevard  
Staten Island, NY 10305

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, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK J. LOCASTRO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(8)~~ 23 of the :  
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ :  
1971 and 1972.

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 Mercurio J. Caruselle,  
Accountant (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mercurio J. Caruselle, Accountant  
1142 Hylan Boulevard  
Staten Island, NY 10305

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 , 1979.

Marilyn J. Robinson

John Huhn



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

February 14, 1979

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

Frank J. Locastro  
140 Dutchess Avenue  
Staten Island, NY 10304

Dear Mr. Locastro:

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 **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 Chyrywaty  
Hearing Examiner

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	:	
FRANK J. LOCASTRO	:	
	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971 and 1972.	:	

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Petitioner, Frank J. Locastro, 140 Dutchess Avenue, Staten Island, New York 10304, 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 1971 and 1972 (File No. 13281).

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 November 15, 1977 at 10:45 A.M. Petitioner appeared by John Passarello, Esq. and Mercurio J. Caruselle. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner's activities as a patent design draftsman constituted the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Frank J. Locastro, filed New York State income tax returns for 1970 and 1971, wherein he reported net business income derived from his activities as a patent design draftsman. He did not file unincorporated business tax returns for these years on the advice of his accountant, Mercurio J. Caruselle.

2. On June 25, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Frank J. Locastro, asserting that the income derived from his activities as a patent design draftsman was subject to unincorporated business tax.

3. During the years in issue, petitioner was a self-employed patent design draftsman who was normally retained by patent attorneys for the purpose of drafting, redesigning, correcting, and preparing drawings for presentation to the United States Patent Office. In addition, his activities included consultation services, as well as the design of visual aids or illustrations used in the courtroom in patent litigation.

4. Petitioner does not have a degree in engineering or in design. However, petitioner participated in a drafting course during evenings at a local high school.

5. Petitioner contended that he was self-taught and that he had reached a level of professionalism through on-the-job training and through his thirty years' of experience in dealing with patent matters and patent attorneys.

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 performance 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 patent design draftsman require special knowledge and skill, the application and nature of these attributes do not constitute a profession within the meaning and intent of section 703(c) of the Tax Law.

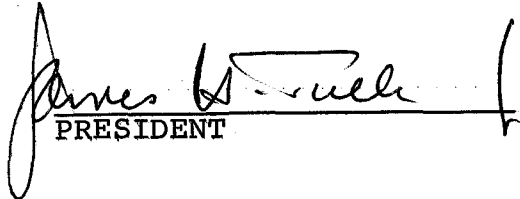
B. That the aforesaid activities of petitioner, Frank J. Locastro, during 1970 and 1971 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.


C. That the petition of Frank J. Locastro, is granted to the extent of cancelling the penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law in the sum of \$409.34 for said years.

D. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued June 25, 1973, and 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