

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD A. RODGERS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(a)~~ 23 of the :
Tax Law for the Year(s) ~~xxxxxxxxx~~ 1968, :
1969, 1970 and 1971.

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 , 19 79, he served the within
Notice of Decision by (certified) mail upon Edward A. Rodgers

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edward A. Rodgers
126 Penn Road
Scarsdale, New York 10583

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

EDWARD A. RODGERS

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) ~~or Period(s)~~ 1968, :
1969, 1970 and 1971.

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 14th day of February , 1979 , she served the within
Notice of Decision by (certified) mail upon John L. Delius, 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 L. Delius, Esq.
7 Woodland Avenue
Larchmont, New York 10538

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. Papneau

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

**Edward A. Rodgers
126 Penn Road
Scarsdale, New York 10583**

Dear Mr. Rodgers:

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 **(a) 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

In the Matter of the Petition	:	
of	:	
EDWARD A. RODGERS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969, 1970 and 1971.	:	

Petitioner, Edward A. Rodgers, 126 Penn Road, Scarsdale, New York 10583, 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 1968, 1969, 1970 and 1971 (File Nos. 13383 and 11515).

On September 16, 1976, petitioner's representative, John L. Delius, Esq., advised the State Tax Commission that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioner's business activities during 1968, 1969, 1970 and 1971 constituted the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law.

1. On November 10, 1971 and March 22, 1972, the Income Tax Bureau issued statements of audit changes against petitioner, Edward A. Rogers, asserting personal income tax for 1964, 1965 and 1968 and unincorporated business tax for 1968, 1969, 1970 and 1971. Accordingly, it issued notices of deficiency in the amount of \$795.33, plus interest of \$156.93, for a total of \$952.26 for 1964, 1965, 1968 and 1969, and in the amount of \$446.08, plus penalty and interest of \$313.87, for a total of \$759.95 for 1970 and 1971. Petitioner paid the personal income tax as shown on the Notice of Deficiency dated May 22, 1972, but did not pay the interest.

2. Petitioner, Edward A. Rodgers, began his 45-year career as an industrial designer in 1927. He attended the University of Oregon School for Design and subsequently took courses in the Faculty of Arts and Sciences at Columbia University.

3. Petitioner taught industrial design to advanced college students in 1935 and 1936. He was instrumental in setting up scholarships for the advancement of industrial design and also gave lectures to executives and to the creative staffs of large corporations.

4. From 1942 to 1957, petitioner was employed by the Erwin Wasey Advertising Agency and, in 1954, was appointed its senior vice-president and creative director.

5. During the years at issue, petitioner rendered services as a creative consultant for Glendenning Company, Chicago Display Company and Merchandising Aids. Petitioner also produced product designs or packaging ideas and presented them to corporations which then used them in their production and marketing strategies. He was never involved in the business affairs of the corporations for whom he rendered services.

6. Petitioner's tax returns for each of the years in question, or the material attached thereto, refer to such activities as "consulting," "consulting fees," "design/promotion," "advertising," etc.

7. Petitioner's letterhead stated "Consultant: Industrial Design/Promotion."

CONCLUSIONS OF LAW

A. That petitioner, Edward A. Rogers, was engaged in consultation and promotional activities, as well as design functions, and that he spent most of his time producing designs for packaging and display projects for various corporations, to be used in their sales promotions.

B. That petitioner is not considered a "professional" for purposes of the unincorporated business tax. The word profession implies attainments in professional knowledge as distinguished from mere skill, as well as the application of knowledge to uses for others as a vocation. 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.

C. That the petition of Edward A. Rogers is denied and the notices of deficiency issued May 22, 1972 and November 24, 1975 are sustained, together with such penalties and interest as may lawfully be owing.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER