

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Peter F. Crosby :

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 Year 1972. :

State of New York

County of Albany

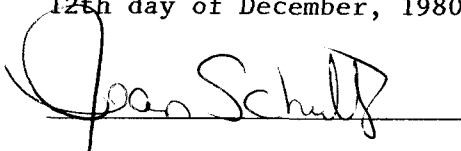
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Peter F. Crosby, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

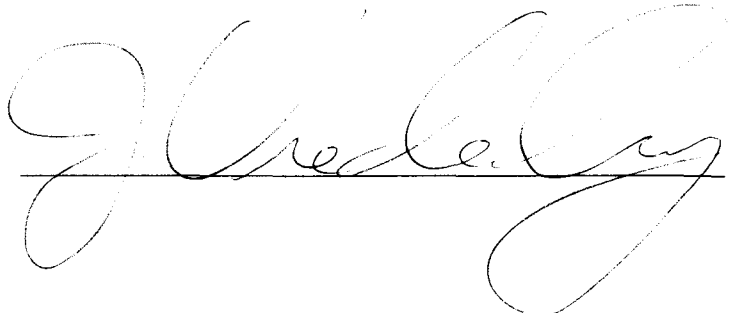
Peter F. Crosby
111 Lincklaen St.
Cazenovia, NY 13035

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
12th day of December, 1980.


Jean Schult


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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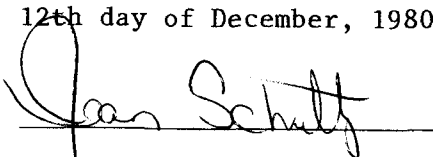
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Edward S. Green the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

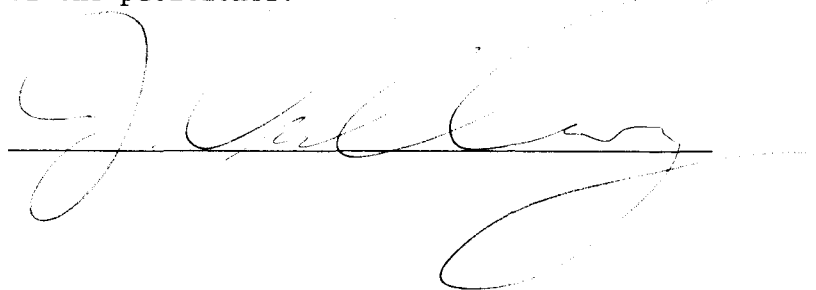
Mr. Edward S. Green
1650 One Lincoln Ctr.
Syracuse, NY 13202

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
12th day of December, 1980.





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

December 12, 1980

Peter F. Crosby
111 Lincklaen St.
Cazenovia, NY 13035

Dear Mr. Crosby:

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
Edward S. Green
1650 One Lincoln Ctr.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PETER F. CROSBY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Year 1972.	:	

Petitioner, Peter F. Crosby, 111 Lincklaen Street, Cazenovia, New York 13035, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1972 (File No. 14820).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on March 18, 1980 at 1:15 P.M. Petitioner, Peter F. Crosby, appeared with Edward S. Green, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the activities of petitioner constituted those of an engineer engaged in the practice of a profession and, thus, not subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Peter F. Crosby, and his wife, Muriel P. Crosby, timely filed a New York State Combined Income Tax Return for 1972, on which he reported his occupation as being an engineer; however, he did not file unincorporated business tax return for said year.

2. The Income Tax Bureau contended that petitioner's activities as an engineer constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax. Accordingly, on February 24, 1976, the Bureau issued a Notice of Deficiency for 1972 in the amount of \$774.29 in unincorporated business tax, plus \$309.65 in penalty and \$166.26 in interest, for a total due of \$1,250.20.

3. Petitioner graduated from Stevens Institute of Technology in Hoboken, New Jersey, in 1937 with a degree in mechanical engineering. After graduation from Stevens, and while employed by General Electric, the petitioner attended night courses given by General Electric in the fields of electrical motor design and selection, industrial controls, and power transmission and relay systems. After World War II in 1946, petitioner supervised building of self-unloading ore carriers for Gypsum Transportation Company. From 1948 through 1958, petitioner engineered, designed and developed elevators, dumbwaiters, machine tools, air pollution control equipment, automatic chemical analyzers, tank cleaning machines and other special machinery.

4. In 1958 petitioner became manager of engineering for Lamson Corporation. Lamson Corporation developed pneumatic tubs, industrial and commercial conveyor systems and provided a material handling consulting service to hospitals and large commercial buildings. The petitioner designed, engineered and sold for Lamson Corporation, high speed polletizers for industrial warehouses, food service systems for schools and other institutions, and horizontal and vertical conveyors for hospitals and commercial buildings. Petitioner's work resulted in five patents related to the materials handling field.

5. From 1970 and during the year at issue, petitioner provided engineering services for professional firms and hospitals. He specialized in the field of materials handling. He also participated as part of professional design teams

in planning and designing new hospital facilities as well as planning additions and alterations for existing hospitals.

Specifically, in 1972, petitioner provided his services to Rogers, Butler, Burgun and Bradbury, an architectural firm, in connection with the construction of a new hospital for Lutheran Medical Center in Brooklyn, New York. He also provided his services to Perkins and Will, an architectural and engineering firm, in connection with the addition to and renovation of the LaGuardia Hospital in Forest Hills, New York. Petitioner prepared materials handling studies, materials handling equipment feasibility studies, designed materials handling systems and departments and wrote the specifications for the materials handling equipment. Virtually all of his time was spent working for architectural and engineering firms, and the work petitioner performed was of architectural responsibility. (If petitioner had not performed these services, the same would have been performed by other engineers and/or architects with competence in the material handling area.)

6. Petitioner testified that during 1972, to the best of his knowledge, the only other firm in New York performing services similar to his was a large engineering firm doing structural engineering and mechanical and electrical design with a division for materials handling and transport systems. Petitioner was both legally and morally responsible for his work and that his work did not entail the rendering of service to the general public, but to architectural and engineering firms.

7. Petitioner is not a licensed professional engineer. He is a mechanical engineer who specializes in materials handling. Materials handling is a recognized division of mechanical engineering and the American Society of Mechanical Engineers has a materials handling division. No license is required for membership in the Society. Petitioner is educationally qualified to be

licensed as professional engineer. Upon his graduation from Stevens in 1937 and with four years of engineering experience, he was qualified to receive a professional engineering license in New Jersey without examination. Petitioner has complied with all licensing requirements of the New York State Education Department required of a licensed professional engineer. However, for the particular work which petitioner performed, licensing was not required, useful or necessary. Petitioner's activities in which he engaged in are indistinguishable from those which would have been performed by a licensed professional engineer.

8. Petitioner's earned income was derived from personal services and no capital was employed. Petitioner employed no assistants or clerical help, maintained no office other than a work space in his home, did not advertise his services, and performed services primarily for other professionals as distinguished from the general public.

CONCLUSIONS OF LAW

A. That petitioner professes a knowledge of mechanical engineering, particularly in the materials handling field; that this professed knowledge was gained by a prolonged course of specialized instruction, study and experience; that the professed knowledge has been practically applied to the design and development of materials handling studies and materials management reports for hospitals, and by the development of products and systems related to the field of materials handling. That the petitioner's knowledge is distinguishable from mere skill because skill is acquired by performing tasks repetitively until a high degree of performance is obtained; whereas, petitioner's attainments required technical knowledge gained from study and experience, and required exercise of discretion, judgment and ingenuity. Petitioner applied this knowledge to the affairs of others by advising and guiding them and in serving their interest and welfare through a department of science or learning known

as mechanical engineering, materials handling.

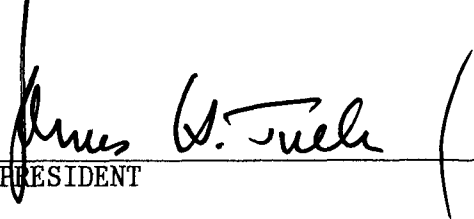
B. That the activities of petitioner, Peter F. Crosby, as mechanical engineer in the field of materials handling for the year 1972, constituted the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

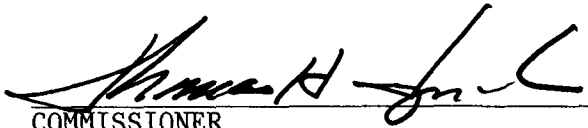
C. That the petition of Peter F. Crosby is granted and the Notice of Deficiency issued on February 24, 1976 is cancelled.


DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER