

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Edward A. Reynolds :
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. :

AFFIDAVIT OF MAILING

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Edward A. Reynolds, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward A. Reynolds
Salt Lake Village
Mattituck, NY 11952

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
11th day of January, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Edward A. Reynolds :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

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Unincorporated Business Tax :

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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 11th day of January, 1980, he served the within notice of Decision by certified mail upon William Wickham the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

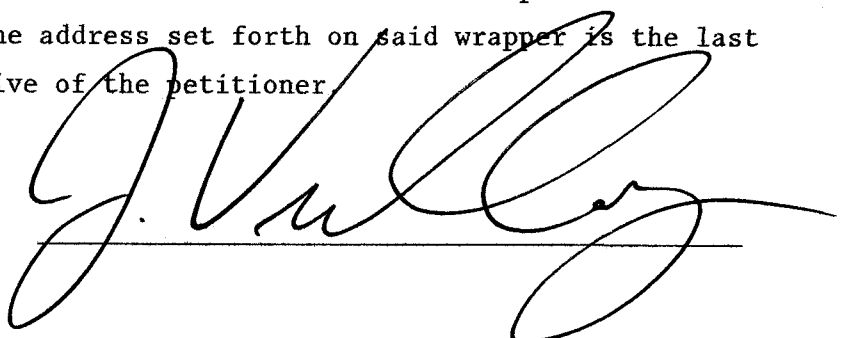
Mr. William Wickham
Eric J Bressler
Mattituck
Long Island, NY 11952

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
11th day of January, 1980.

Joanne Knapp



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

January 11, 1980

Edward A. Reynolds
Salt Lake Village
Mattituck, NY 11952

Dear Mr. Reynolds:

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
William Wickham
Eric J Bressler
Mattituck
Long Island, NY 11952
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

EDWARD A. REYNOLDS :

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.

Petitioner, Edward A. Reynolds, Salt Lake Village, Mattituck, New York 11952, 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. 00319).

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 June 21, 1978 at 1:15 P.M. Petitioner appeared pro se and by Eric J. Bressler, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner, as a quality assurance engineer, is engaged in the practice of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Edward A. Reynolds, and Gertrude M. Reynolds, his wife, filed New York State resident income tax returns for 1967 through 1969. Mr. Reynolds reported income received as a consultant. Petitioner did not file any unincorporated business tax returns for the years at issue.

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1967 through 1969, imposing unincorporated business tax of \$3,372.98, plus penalty and interest. The Income Tax Bureau issued a Notice of Deficiency on the grounds that the activities of petitioner constituted the carrying on of an unincorporated business subject to unincorporated business tax.

3. Quality assurance engineering is synonymous with quality control engineering and is a specialty of professional engineering. It requires such education and experience as is necessary to understand and apply the principles of product and service quality evaluation and control used in the planning, development and operation of quality control systems, and in the application and analysis of testing and inspection procedures. It further requires the ability to apply metrology and statistical methods to diagnose and correct improper quality control practices, in order to assure product and service reliability and conformity to prescribed standards.

4. Petitioner, Edward A. Reynolds, received a degree in mechanical engineering from Rensselaer Polytechnic Institute in 1936 and has taken advanced engineering training at Columbia University, New York University and Syracuse University. He did not have a professional engineer's license since his work never required one.

5. Quality assurance engineering has been developed by a small group of engineers (including petitioner) as a separate field of endeavor. It is now recognized by many institutions of higher learning, including the University of Arizona, San Jose State College, Florida Institute of Technology, Georgia Tech, the University of Illinois and the Rochester Institute of Technology. These and other institutions offer a Master's degree in quality assurance engineering. There are many additional institutions which offer a four-year course leading to the degree of Bachelor of Arts in Quality Assurance Engineering. Petitioner has lectured at the University of California, the University of Connecticut, Bridgeport University

and Indiana State University. He was an associate professor at Syracuse University where he taught regular classes (for credit) to undergraduate engineering students, conducted quality control seminars for graduate students and supervised their Master's theses in quality control.

6. Mr. Reynolds is a fellow of the American Society for Quality Control and of the Institution for Engineering Inspection (British). Petitioner is also a member of the American Society for Testing and Materials, the American Society for Nondestructive Testing, the Instrument Society of America and the American Statistical Association.

7. Upon graduation, petitioner's first position was with the Johns Manville Corporation. His work consisted of preparing testing methods and specifications for the raw materials used in the production of company products. During the late 1930's and early 1940's, petitioner was one of the first people to develop the area of quality assurance engineering. He taught his first course in this area to his fellow employees at Johns Manville in the late 1930's. He proposed the first training film entitled "Modern Quality Control" which was subsequently used by the United States Government for training quality assurance personnel and which was shown around the world. The techniques which petitioner developed in this period are still in use throughout the industry today. Petitioner then decided to move on and expand his horizons in quality assurance engineering, particularly in the metallurgical and electrical fields. Petitioner went on to become Quality Control Manager for the Easy Washing Machine Corporation, supervising a staff of 250 inspectors, technicians and engineers. His work consisted of developing engineering and statistical techniques to improve and maintain product quality and reliability.

In 1947 petitioner was approached for the purpose of running a program funded by the United States Department of Commerce, to investigate the use of statistical quality control engineering techniques in industry and to develop training techniques for its application there. During this period, petitioner investigated quality methods and technique problems in over 400 industries. Petitioner's work was published by the United States Government.

Upon completion of the project, petitioner worked for the Dixie Cup Company, Conmar Products Corporation and the Ronson Corporation in the field of quality assurance engineering. During this period, he developed automated inspection equipment and used advanced statistical designs to evaluate products and to locate the causes of defects, as well as provide for their correction.

Petitioner then moved on to a field of quality control relating to atomic energy. He accepted employment with Westinghouse Electric-Atomic Power Division, as a Fellow Engineer. He worked on the problem of shelf life of atomic weapons, on the manufacture of atomic fuel and on quality control problems associated with atomic reactors.

8. In 1957 petitioner left Westinghouse and became an independent quality assurance engineer. He rendered services to many corporations. These services included (for example) his setting up quality controls for the rubber industry. During this period, he conducted training courses and seminars on quality control for universities, for societies within the field and for governmental groups. He is also the quality assurance engineer for the Atomic Energy Commission. Petitioner has written many books and articles on quality control.

9. Petitioner contended that he was an independent consultant in quality control. The business letterhead he used showed his occupation as that of a "Quality Control Consultant" and that he maintained an office in his home.

10. More than 80% of the gross income of petitioner, Edward A. Reynolds, was derived from the personal services rendered by him. Capital was not an income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Edward A. Reynolds, as a quality control consultant during the years in issue, although requiring the application of specialized knowledge, did not constitute the practice of a profession in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of and services rendered by petitioner, Edward A. Reynolds, during the years in issue, constituted the carrying on of an unincorporated business; thus, his income derived therefrom was subject to unincorporated business tax within the meaning and intent of sections 701 and 703 of the Tax Law.

C. That the petition of Edward A. Reynolds is denied and the Notice of Deficiency issued on June 26, 1972 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER

I dissent. Petitioner had the requisite educational background and specialized training in science to be considered a professional.
(Matter of Teague v. Graves, 261 A.D. 652, aff'd 287 N.Y. 549)


Commissioner