

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James W. Anderson :
: 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 Years 1968 through 1974

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon James Anderson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James W. Anderson
6 Usonia Rd.
Pleasantville, NY 10570

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
1st day of May, 1981.

Annex A. Hagelund

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

May 1, 1981

James W. Anderson
6 Usonia Rd.
Pleasantville, NY 10570

Dear Mr. Anderson:

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

Taxing Bureau's Representative

STATE TAX COMMISSION

of

DECISION

Petitioner, James W. Anderson, Jr., 6 Usonia Road, Pleasantville, New York 10570, 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, 1971, 1972, 1973 and 1974 (File No. 18666).

ISSUES

II. Whether petitioner is properly entitled to refunds of the unincorporated business tax paid for the years 1968 through 1974.

1. Petitioner, James W. Anderson, Jr., filed separate New York State income tax resident returns for 1968 and 1969. For the years 1970 through 1974 he filed New York State combined income tax returns with his wife, Margery

Anderson. On each of said returns petitioner listed his occupation as "Service Engineer" and reported business income from activities variously described as "service and consulting" (1968 and 1969), "technical service" (1970), and "service technical" (1971, 1973 and 1974). Petitioner did not file unincorporated business tax returns for any of said years at issue.

2. On November 27, 1972, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that for the years 1968, 1969 and 1970, the income from his "activities as Service Engineer is subject to the unincorporated business tax". Accordingly, a Notice of Deficiency was issued against petitioner for said years on February 25, 1974 asserting unincorporated business tax of \$656.20, penalties pursuant to sections 685(a)(1) and 685(a)(2) of \$239.72, for failure to file such returns and failure to pay the tax determined to be due, respectively, plus interest of \$138.00, for a total due of \$1,033.92.

3. On June 17, 1974, James W. Anderson, Jr. filed a petition for redetermination of the deficiency asserted for the years 1968, 1969 and 1970, but since such petition was untimely filed, it was therefore denied. As an alternative method of securing a hearing, petitioner paid the entire deficiency (inclusive of penalties and interest) on July 21, 1974, and subsequently filed a claim for credit or refund for each of the years 1968, 1969 and 1970.

4. On March 2, 1976, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that the income derived from his activities for the years 1971, 1972, 1973 and 1974 was subject to the unincorporated business tax. On March 28, 1976, petitioner paid the deficiency per said statement of \$2,062.96, which was comprised of unincorporated business tax of \$1,754.84, plus interest of \$308.12.

5. On January 29, 1977, petitioner timely filed a claim for credit or refund for each of the years 1971, 1972, 1973 and 1974. Subsequently, on

February 28, 1977, petitioner was issued a formal notice disallowing said claims.

6. Petitioner contended that the activities which he was engaged in during all the years at issue, regardless of the terminology used to describe such activities on his returns, were those of a "spectroscopist". As such, he contended that he was practicing a profession within the meaning and intent of section 703(c) of the Tax Law and accordingly, the income derived therefrom, he argued, is exempt from the imposition of unincorporated business tax.

7. During the years at issue, petitioner was engaged in activities primarily dealing with the servicing of emission spectrometers. Spectrometry, in general, is a field of science in which some orderly aspect of energy is associated with materials for the purpose of either understanding more about how molecules and atoms are constructed or using the acquired knowledge of certain energy patterns to determine the elemental or molecular forms in unknown materials. Spectrometry is variously claimed as being a subdivision of the science of physics or chemistry. Petitioner's activities of servicing spectrometers, which are the highly sophisticated and complex machines used for spectrometric analysis, required a broad understanding and extreme competence in the areas of chemistry, electronics, optics, metallurgy, mechanics and mathematics.

8. The forms of spectrometry in which petitioner was involved dealt with making analysis of the elements contained in an unknown material, particularly in determining metallic elements. Application was mostly by producers or users of metals but extended to other fields such as looking for wear metals in used lubricating oil, or looking for trace contaminations in organic materials such as food, drugs or plastics.

9. Petitioner was called upon to service spectroscopic equipment by various laboratories predominantly in the northeastern United States. Additionally, he acted as the service representative for certain spectroscope manufacturers. Although classified as a service call, a portion of petitioner's time in a laboratory was devoted to studying ways of refining or expanding the analysis being done. Petitioner was involved with installing new equipment and training the technical staff on the uses and operation of such equipment. Petitioner's interpretation of analytical data required a knowledge and understanding of statistics. On various occasions his activities included the design or redesign of control circuitry and the reworking of programs on direct reading spectrographs.

10. Petitioner's formal technical training was obtained at the Polytechnic Institute of Brooklyn where he received a Bachelor's Degree in Chemical Engineering in 1942. Since then, except for five and a half years in other technical fields, petitioner has been involved in the field of spectroscopy.

11. Petitioner has served as an advisor to the National Bureau of Standards.

12. Petitioner is an active member of the Society for Applied Spectroscopy. Additionally, he is a member of the American Society for Testing Materials.

13. Petitioner has authored various scientific publications in the field of spectroscopy.

14. There are no formal licensing requirements in the field of spectroscopy.

15. Capital was not a material income-producing factor in petitioner's business and more than eighty per centum of petitioner's gross income was derived from personal services actually rendered by him.

CONCLUSIONS OF LAW

A. That there exists "the necessity for recognizing in the law, as in our universities, new professions which have been called into being to take

care of modern requirements of our expanding civilization". (Matter of Geiffert v. Mealey, 293 N.Y. 583,587.)

B. That the term "other profession" includes any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interest or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill and the application of knowledge to uses for others as a vocation.

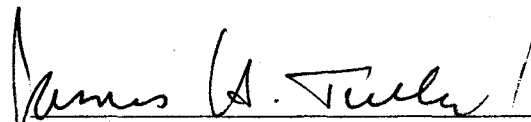
C. That the activities of petitioner as a spectroscopist during the years at issue constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

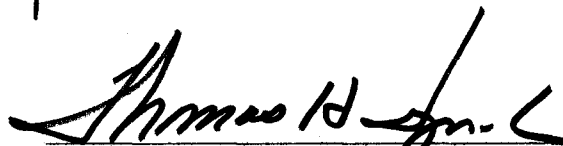
D. That the petition of James W. Anderson, Jr. is granted and that petitioner's claims for credit or refund of the unincorporated business tax paid for the years 1968, 1969, 1970, 1971, 1972, 1973 and 1974 are granted.

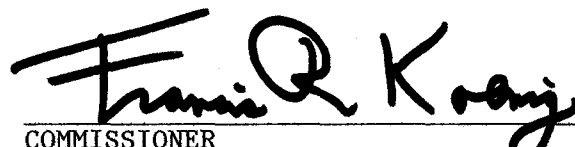
DATED: Albany, New York

STATE TAX COMMISSION

MAY 01 1981


PRESIDENT


COMMISSIONER


COMMISSIONER