

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

James Simes :

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 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 5th day of February, 1981, he served the within notice of Decision by certified mail upon James Simes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Simes
2510 Virginia Ave. N.W.
Washington, DC 20037

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
5th day of February, 1981.

Conna A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

James Simes

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 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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Andrew D. Ball 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. Andrew D. Ball
Landis, Cohen, Signman & Rauh
1019 Nineteenth St., Suite 500
Washington, DC 20003

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
5th day of February, 1981.

Conrad P. Haglund

J. Vredenburg

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

February 5, 1981

James Simes
2510 Virginia Ave. N.W.
Washington, DC 20037

Dear Mr. Simes:

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) 690 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
Andrew D. Ball
Landis, Cohen, Signman & Rauh
1019 Nineteenth St., Suite 500
Washington, DC 20003
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES SIMES	:	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, James Simes, 2510 Virginia Avenue NW, Washington, D.C. 20037, 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. 14233).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 13, 1980 at 1:00 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the business activities of petitioner constituted an unincorporated business or rather the practice of a profession deemed not to be an unincorporated business.

FINDINGS OF FACT

1. On September 30, 1974, the Audit Division issued a Statement of Audit Changes against James Simes imposing unincorporated business tax due for 1967, 1968 and 1969 in the amount of \$2,310.28 plus penalties of \$895.45, and interest of \$692.15 for a total of \$3,897.88.

2. James Simes, a graduate of New York University, School of Engineering operated his own business during the periods in issue, J.F. Simes & Co., located at 310 Madison Avenue, New York, New York. He provided information to public utilities as to the capabilities of gas distribution companies for handling new supplies of natural gas, and as to the requirements for peak-sharing capabilities of gas distribution companies. He took business administration courses which included accounting and law at St. John's University. He was employed by Consolidated Edison for many years. He was then general manager of a Chilean Electrical Company in Chile, director of planning and development for New Jersey Natural Gas Company, a consultant to Ebasco Services in New York City, New York providing professional services to electric and gas utility services and finally with Commonwealth Services, Inc. in New York City, New York. In 1966 he formed his own company.

3. During the periods in issue, petitioner evaluated facilities for utility companies to determine whether or not a utility should go forward with the construction of a line, system, or a plant. He determined the economic value for technical designs prepared by either the utility's engineer or an outside engineering consultant. He had four major clients, Texas Eastern Transmission Corporation, Boston Gas Company, Northwest Natural Gas Company and New Jersey Gas Company. He was assisted by a licensed engineer who was a "pipeline man" who did the "flow studies". He was paid around \$20,000.00 per year. Capital was not a material income - producing factor in petitioner's work and more than 80 percent of petitioner's income was derived from services personally rendered.

4. Petitioner filed federal schedule C, Profit (or Loss) from Business or Profession. He listed his principal business activity as "Consultant".

CONCLUSIONS OF LAW

A. That the activities of petitioner James Simes, as a consultant during the years 1967, 1968 and 1969 did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

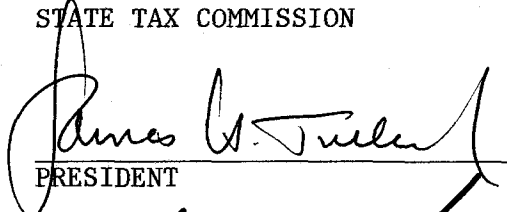
B. That the activities of petitioner constituted the carrying on of an unincorporated business under section 703 of the Tax Law the income derived therefrom is subject to unincorporated business tax.


C. That petition of James Simes is denied and the Notice of Deficiency issued September 30, 1974 is sustained.

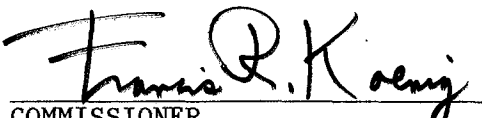
DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER