

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George J. Greer :
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 1970, 1971, 1973-1976. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon George J. Greer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George J. Greer
1123 Douglas Place
Seaford, NY 11783

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 May, 1983.

David Parchuck

Annis P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 11, 1983

George J. Greer
1123 Douglas Place
Seaford, NY 11783

Dear Mr. Greer:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE J. GREER	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1970,	:	
1971 and 1973 through 1976.	:	

Petitioner, George J. Greer, 1123 Douglas Place, Seaford, New York 11783, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970, 1971 and 1973 through 1976 (File Nos. 29647 and 29648).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 16, 1981 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a sales engineer constituted the practice of a profession from which income derived therefrom is exempt from the imposition of unincorporated business tax.

II. Whether services rendered by petitioner as a sales engineer were those of an employee from which income derived therefrom is exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. George J. Greer (hereinafter petitioner) filed joint New York State income tax resident returns with his wife for the years 1970, 1971 and 1973

through 1976 wherein he reported business income derived from his activities described as "sales engineer/manufacturer's representative". Petitioner did not file an unincorporated business tax return for any of said years at issue.

2. On November 5, 1979 the Audit Division issued two Statements of Audit Changes to petitioner. One was with respect to 1970, 1971 and 1973, and the other was with respect to 1974, 1975 and 1976. Each held that the income from petitioner's "activities as sales engineer is subject to the unincorporated business tax based on the State Tax Commission Decision of February 14, 1979." Accordingly, two Notices of Deficiency were issued against petitioner on December 21, 1979. One asserted unincorporated business tax of \$513.96 for the years 1970, 1971 and 1973 (inadvertently listed on such notice as 1970, 1971 and 1972), plus interest of \$253.28, for a total due for said years of \$767.24. The second Notice asserted unincorporated business tax of \$3,224.14 for the years 1974, 1975 and 1976, penalties of \$146.17 pursuant to section 685(c) of the Tax Law for failure to file a declaration of estimated unincorporated business tax, plus interest of \$1,046.92, for a total due for said years of \$4,417.23.

3. Petitioner George J. Greer graduated from Cooper Union in 1950 with the degree of Bachelor of Electical Engineering. In 1953 he earned the degree of Master of Business Administration from New York University.

4. During the years at issue herein, petitioner conducted business under the name "Greer Technical Sales Co." at the address reported as his personal residence. His activities consisted of selling sophisticated specialty equipment for Kato Engineering (Kato), his sole principal during the years at issue.

5. Kato required that its representatives (inclusive of petitioner) have engineering degrees so that they could understand and solve the problems of the

end users. Petitioner argued that since an engineering degree was required for the conduct of his activities, his income derived from such activities should be construed as income derived from the practice of a profession.

6. Kato assigned petitioner a territory and had the right to terminate him on thirty days' notice. Additionally, Kato required petitioner to visit specified customers, attend trade shows and meet sales quotas.

7. Kato was located in Mankato, Minnesota. Petitioner visited the Kato office at least once a year. The bulk of his dealings with Kato were done by correspondence or telephone.

8. Petitioner's normal work week consisted of three days on the road and two days reviewing specifications and obtaining quotations. Kato did not reimburse petitioner for his ordinary and necessary business expenses incurred.

9. Kato did not provide petitioner with a pension plan, health insurance or a paid vacation. Furthermore, it did not withhold personal income or social security taxes from petitioner's compensation.

10. Kato did not prohibit petitioner from representing other principals.

11. Petitioner's activities were essentially identical to those engaged in during the years 1967, 1968 and 1969, said years being the subject of a prior State Tax Commission decision. Petitioner argued that his income is exempt from the imposition of unincorporated business tax during the years at issue since he performed services for only one principal as opposed to three principals for said prior years.

CONCLUSIONS OF LAW

A. That the activities of petitioner George J. Greer during the years 1970, 1971 and 1973 through 1976, although requiring special knowledge, did not constitute the practice of a profession within the meaning and intent of

section 703(c) of the Tax Law. (Matter of George J. and Dorothy C. Greer, State Tax Commission Decision, February 14, 1979.)

B. That sufficient direction and control was not exercised by Kato over petitioner's day-to-day activities so as to form a relationship of employer-employee. Accordingly, services rendered by petitioner were not those of an employee of Kato within the meaning and intent of section 703(b) of the Tax Law and 20 NYCRR 203.10.


C. That the aforesaid activities of petitioner constituted the carrying on of an unincorporated business pursuant to section 703(a) of the Tax Law. Accordingly, the income derived therefrom is subject to the imposition of unincorporated business tax pursuant to section 701(a) of the Tax Law.

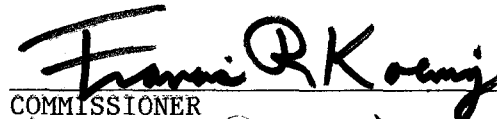
D. That the petition of George J. Greer is denied and the notices of deficiency both dated December 21, 1979 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 11 1983


PRESIDENT


COMMISSIONER


COMMISSIONER