

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

VAN DAY TRUEX

For a Redetermination of a Deficiency or  
a Refund of Personal & Unincorporated Business Taxes  
Taxes under Article(s) 22 and 23 of the  
Tax Law for the (Year(s) 1965

*Pers. Inc. - Falsey*  
*Van Day Truex*  
*Truex*  
1970  
AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL  
*deposited*  
*cc H*  
*99-348*

State of New York  
County of Albany

Claire A. Draves , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 30th day of November , 1970 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon John H. Falsey,  
Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: John H. Falsey, Esq.  
Lewis, MacDonald & Varian  
425 Park Avenue  
New York, New York 10022

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

30th day of November , 1970

*James Wright*

*Claire A. Draves*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

VAN DAY TRUEX

For a Redetermination of a Deficiency or  
a Refund of Personal & Unincorporated Business Taxes  
Taxes under Article(s) 22 and 23 of the  
Tax Law for the Year(s) 1965

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Claire A. Draves, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 30th day of November, 1970, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Van Day Truex

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Van Day Truex  
c/o Arthur S. Swenson  
400 Madison Avenue  
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

30th day of November, 1970

John Wright

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
VAN DAY TRUEX	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 and Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the year 1965	:	

---

Taxpayer petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 and unincorporated business taxes under Article 23 of the Tax Law for the year 1965. A formal hearing was held before Alfred Rubenstein, Hearing Officer, in the offices of the State Tax Commission in the city of New York on January 8, 1968. The taxpayer was represented by Messrs. Lewis, MacDonald & Varian (John H. Falsey, Esq., of counsel).

FINDINGS OF FACT

1. The issues in this case are whether the activities of the taxpayer constitute the conducting of an unincorporated business and whether the taxpayer is a resident of the State of New York for income tax purposes.
2. Taxpayer was a design consultant for Tiffany and Company of New York. In this capacity he approved and passed on merchandise submitted to the company. He further designed and created merchandise to be sold by the company. His agreement with this company since 1961 was to serve as a consultant five months each year in New York and seven months abroad.
3. Taxpayer filed New York State Unincorporated Business Tax Returns for 1961, 1962, 1963 and 1964, reporting the income received as design consultant. He filed a New York resident return for 1964, stating he was a New York resident during the entire taxable year.

On all returns he listed his address as 55 West 42nd Street, New York City.

4. For the year 1965, the taxpayer filed a non-resident return claiming his home address to be in France. Taxpayer filed no Unincorporated Business Tax Return for 1965. A statement of audit changes was issued September 25, 1967, file #49265216 assessing the taxpayer additional personal income tax of \$431.12 claiming that the taxpayer was still a resident of New York. This statement also assessed the taxpayer \$69.66 unincorporated business tax on income received as a design consultant.

5. Taxpayer had moved to France in 1962 and purchased a home there in that year. Since that time the taxpayer has sublet the same apartment, located at 925 Park Avenue, New York City, during the five months he spent in New York each year.

6. Taxpayer has not renounced his American citizenship, pays no income tax in France, maintains bank and brokerage accounts in New York City and maintains a New York State drivers' license.

DECISION

A. The taxpayer has failed to carry his burden of proof. Taxpayer was a resident of New York for tax purposes for the year 1965.

B. The activities of the taxpayer constituted the carrying on of an unincorporated business, the income from which is subject to unincorporated business tax.

C. The petition is denied, and the assessment as issued is sustained.

DATED: Albany, New York  
*November 27, 1970*

STATE TAX COMMISSION

*Thomas J. Sullivan*  
COMMISSIONER  
*John M. Nangle*  
COMMISSIONER  
*William K. Green*  
COMMISSIONER