

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MELVIN BOURNE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of ~~Personal Income and~~ :
~~Unincorporated Business~~ :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year ~~(XXXXXX)~~ 1972.:

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of April , 1978, ~~he~~ he served the within
Notice of Decision by (certified) mail upon Melvin Bourne
~~(XXXXXXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Melvin Bourne
54 Riverside Drive
New York, New York 10024

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 April , 1978.

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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MELVIN BOURNE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of ~~Personal Income and~~ :
~~Unincorporated Business~~ :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year ~~(s) 1972~~ 1972.:

State of New York
County of Albany

John Huhn , 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 April , 19 78, ~~he~~ served the within
Notice of Decision by (certified) mail upon Arthur B. Greene

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Arthur B. Greene, CPA
230 Park Avenue
New York, New York 10017

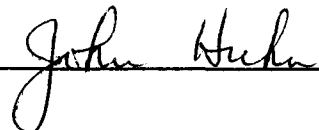
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 April , 1978







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

April 5, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. Melvin Bourne
54 Riverside Drive
New York, New York 10024**

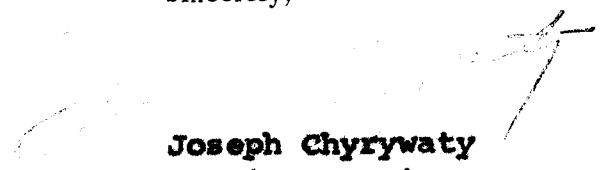
Dear Mr. Bourne:

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 & 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Joseph Chyrywat
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MELVIN BOURNE : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Year 1972. :
:

Petitioner, Melvin Bourne, 54 Riverside Drive, New York, New York 10024, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1972 (File No. 11020).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 27, 1977 at 10:45 A.M. Petitioner appeared by Arthur B. Greene, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the petitioner's activities as a scenic designer constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

II. What the petitioner's allowable business expenses were for the year 1972.

FINDINGS OF FACT

1. On July 28, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Melvin Bourne, for the year 1972 in the sum of \$3,973.13, plus penalty and interest. This deficiency resulted from the imposition of unincorporated business tax on income derived from petitioner's activities as a scenic designer and from the disallowance of various business expenses.

2. From 1949 through the year at issue the petitioner has been a scenic designer for theater, motion pictures and television. He graduated from Purdue University in 1945 and then attended Lehigh University for one year. After completing his training at Lehigh, he attended Yale University School of Fine Arts and matriculated for two years at its Department of Drama. After leaving Yale, he taught at the King Smith School of Creative Arts in Washington, D.C., teaching history of the theater and scenic designing.

3. The petitioner's activities as a scenic designer consisted of creating scenery for theatrical stage plays, television and motion picture productions. He rendered scale drawings of these scenes so as to fit the stage with the scenes he created. Upon acceptance of these drawings by the producer, he then supervised the construction and painting of the sets.

4. In the practice of petitioner's activities as a scenic designer, capital was not a material factor in the production of income, and more than 80% of the gross income involved was derived from personal services rendered by the petitioner.

5. A State Tax Commission determination dated September 14, 1959, in Matter of the Applications of Howard Bay, found that the activities of Mr. Howard Bay as a

scenic designer constituted the practice of a profession within the meaning of section 386 of Article 16-A of the Tax Law, the predecessor to Article 23 of said Law.

6. The business expense deductions claimed by the petitioner and disallowed by the Income Tax Bureau are as follows:

<u>ITEM</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>DISALLOWED</u>
1. Auto Expense	\$1,561.00	\$ 0	\$1,561.00
2. Christmas Expenses	498.00	348.00	150.00
3. Periodicals	413.00	383.00	50.00
4. Repairs & Maintenance	1,033.00	0	1,033.00
5. Taxis & Fares	520.00	0	520.00
6. Tools & Supplies	668.00	468.00	200.00
7. Travel - Transportation	607.00	0	607.00
8. Travel - Hotels	368.00	0	368.00
9. Travel - Food and Living Expenses	460.00	0	460.00
	<u>\$6,128.00</u>	<u>\$1,199.00</u>	<u>\$4,949.00</u>
Medical Adjustment at 3% of \$4,949.00			<u>148.47</u>
Total Adjustment			\$5,097.47

(Note that subtraction of the items allowed from the items disallowed does not equal the amount disallowed. This results from a \$20.00 error in item #3.)

The petitioner contested the disallowance of auto expense deductions, repairs and maintenance, taxi fares and travel expenses.

7. Petitioner submitted cancelled checks and billings substantiating that he is entitled to an automobile expense deduction in the sum of \$1,122.00.

8. Petitioner used one-seventh of his apartment during 1972 for business purposes and incurred repair and maintenance business expenses in the sum of \$394.00.

9. Petitioner failed to submit documentary or other substantial evidence to prove that he incurred expenses for taxis and other fares.

10. During 1972 the petitioner incurred travel expenses for trips he made to Paris, France and Rome, Italy. He did not submit evidence indicating the purpose or necessity of these trips.

CONCLUSIONS OF LAW

A. That the activities of the petitioner as a scenic designer conducted by him during the year 1972 constituted the practice of a profession within the meaning of section 703(c) of the Tax Law.


B. That the petitioner is allowed business expenses for his automobile and for repairs and maintenance in the sums of \$1,122.00 and \$394.00, respectively, and that he failed to submit the documentary evidence necessary to substantiate business expenses for taxi fares or travel expenses.

C. That the petition of Melvin Bourne is granted to the extent of cancelling the unincorporated business tax due and the penalties imposed pursuant to section 685(a) and (b) of the Tax Law; that the business expenses are to be adjusted to reflect the allowable auto, auto repair and maintenance expenses as determined in Conclusion of Law "B", above; also, that the error in calculation noted in Finding of Fact "6" be corrected.

DATED: Albany, New York
April 5, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER