

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NICK and ROSE (Now Deceased) CALABRESE

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 and 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1964 :
and 1965.

State of New York
County of Albany

John Huhn, 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 14th day of February, 1979, she served the within
Notice of Decision by (certified) mail upon Nick and Rose (Deceased)
Calabrese ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Nick and Rose (Deceased) Calabrese
12-22 Bellair Avenue
Fair Lawn, NJ 07410

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)~~
~~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

14th day of February, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NICK and ROSE (Now Deceased) CALABRESE

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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 and 23 of the
Tax Law for the Year(s) ~~or Period(s)~~ 1964 :
and 1965.

State of New York
County of Albany

John Huhn , 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 14th day of February , 1979 , she served the within
Notice of Decision by (certified) mail upon Joseph J. Arcoleo, CPA

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Joseph J. Arcoleo, CPA
120 Liberty Street
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 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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

Nick and Rose (Deceased) Calabrese
12-22 Bellair Avenue
Fair Lawn, NJ 07410

Dear Mr. Calabrese:

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 and 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	:	
	:	
NICK and ROSE (Now Deceased) CALABRESE	:	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 Years 1964 and 1965.	:	

Petitioners, Nick and Rose (now deceased) Calabrese, 12-22 Bellaire Avenue, Fair Lawn, New Jersey 07410, 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 years 1964 and 1965 (File No. 01140).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 9, 1978 at 1:15 P.M. Petitioner Nick Calabrese appeared by Joseph J. Arcoleo, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

I. Whether any of petitioner Nick Calabrese's activities as a commercial artist during 1964 and 1965 constituted the

practice of a profession within the meaning and intent of section 703(c) of the Tax Law, or whether said activities constituted the carrying on of an unincorporated business subject to the imposition of unincorporated business tax, in accordance with section 701(a) of the Tax Law.

II. Whether petitioner Nick Calabrese maintained a regular place of business at his home in New Jersey, entitling him to an allocation of income for personal income and unincorporated business tax purposes.

FINDINGS OF FACT

1. Petitioners, Nick and Rose (now deceased) Calabrese, timely filed New York State nonresident personal income tax returns for 1964 and 1965. Petitioner Nick Calabrese filed New York State unincorporated business tax returns for said years, in which he allocated net business income to sources within and without New York State. He also indicated that a substantial portion of his business income (83% to 88%) was derived from the practice of a profession and was, therefore, exempt for purposes of the unincorporated business tax.

2. The Income Tax Bureau contended that petitioner Nick Calabrese was engaged in the carrying on of an unincorporated business in New York State and that the income derived therefrom was not allocable to sources outside New York State. On

January 22, 1968, the Income Tax Bureau issued a Notice of Deficiency to petitioners, asserting unincorporated business and personal income taxes of \$233.22 and \$298.06, respectively, plus interest of \$64.25, for a total of \$595.53.

3. During the years at issue, petitioner Nick Calabrese's income was derived from his activities as both a commercial and non-commercial artist. His artistic activities included the preparation of color illustrations for magazine covers and illustrations for articles in Reader's Digest magazine. His net business income (which was derived from his artistic activities) constituted 59% of his total net business income in 1964 and 67% of the total in 1965. Petitioner's other business activities during the years at issue involved illustrations for calendars and advertisements.

4. Petitioner contended that he maintained an office in New York City, as well as a work area in his New Jersey home. He further contended that the space used at his home in New Jersey was a regular place of business. He contended that his wife assisted him in performing research and bookkeeping and that he kept and used equipment for photography and art work at his home. Petitioner did not submit adequate documentary or other evidence to show how much time, if any, was spent in New Jersey performing services for his principals.

5. Petitioner Nick Calabrese did not submit any documentary or other substantial evidence to show that a business or profession was regularly and systemically carried on in New Jersey. He did not submit any books or records adequately separating New York income and expense from New Jersey income and expense.

6. Petitioner Nick Calabrese has maintained an office in New York City since 1955, as well as during the years at issue. Except for one minor account, all of his principals were located in New York and all were solicited from the New York office. Petitioner's only business bank account was located in New York, as was his only business telephone listing.

CONCLUSIONS OF LAW

A. That petitioner Nick Calabrese's activities for Reader's Digest during 1964 and 1965 constituted the practice of a profession; therefore, the portion of his income derived from said activities (as set forth in Finding of Fact "3") was not subject to unincorporated business tax, in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That petitioner's activities as a commercial artist for all principals except Reader's Digest, although requiring special knowledge, skill and experience, did not constitute the practice of a profession; therefore, the portion of his income derived from such activities was subject to unincorporated business tax, in accordance with the meaning and intent of section 703(a) of the Tax Law.

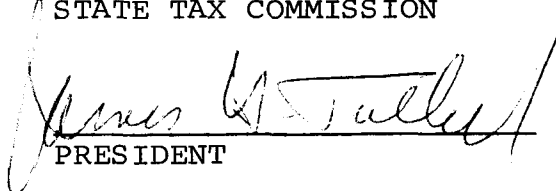
C. That the amount of income received from all principals except Reader's Digest was too small to produce a tax; therefore, the unincorporated business tax due of \$233.22 shown on the Notice of Deficiency issued January 22, 1968 is cancelled.

D. That petitioner Nick Calabrese did not maintain a regular place of business outside New York State, but did maintain a regular place of business within New York State; therefore, all income for personal income tax purposes is allocable to New York State, in accordance with the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.11.

E. That the petition of Nick and Rose (now deceased) Calabrese is granted to the extent that the unincorporated business tax of \$233.22 is cancelled; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 22, 1968 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER