

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALVIN COLT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income and Unincorporated Bus :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year ~~(xxxxxx)~~ Period(s) :
1970 and 1972

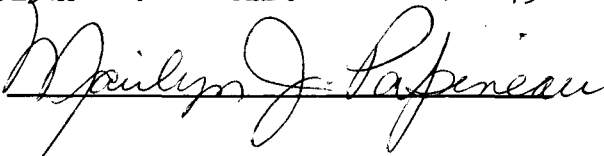
State of New York
County of Albany

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 15th day of March , 1979 , she served the within
Notice of Decision by (certified) mail upon Alvin Colt
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alvin Colt
c/o Arnold Weissberger, Esq.
120 East 56th Street
New York, NY 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of xxxxx~~) petitioner.

Sworn to before me this

15th day of March , 1979.


Marilyn J. Papeneau


John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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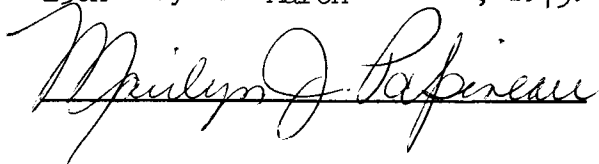
State of New York
County of Albany

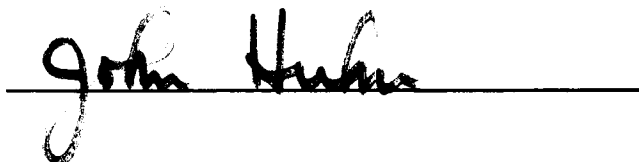
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of March , 1979 , she served the within
Notice of Decision by (certified) mail upon Howard O. LeShaw
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Howard O. LeShaw
35 West 53rd Street
New York, NY 10019
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.

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15th day of March , 1979.





STATE OF NEW YORK
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1970 and 1972

State of New York
County of Albany

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age, and that on the 15th day of March , 1979 , she served the within
Notice of Decision by (certified) mail upon Seymour Reitknecht, Esq.

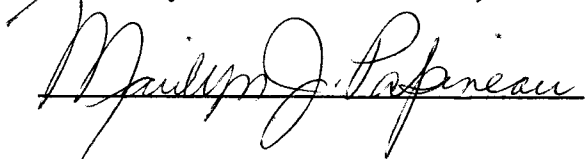
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Seymour Reitknecht, Esq.
575 Madison Avenue
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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last known address of the (representative of the) petitioner.

Sworn to before me this

15th day of March , 1979 .


William J. Papineau


John Huhn



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

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

March 15, 1979


Alvin Colt
c/o Arnold Weissberger, Esq.
120 E. 56th St.
New York, NY 10022

Mr. Colt:

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	:	
ALVIN COLT	:	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 1970 and 1972.	:	

Petitioner, Alvin Colt, c/o Arnold Weissberger, Esq.,
120 East 56th Street, New York, New York 10022, 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 1970 and 1972 (File No. 13125).

A small claims hearing was held before William Valcarcel,
Hearing Officer, at the offices of the State Tax Commission, Two
World Trade Center, New York, New York, on August 29, 1977 at
9:15 A.M. The petitioner appeared with Seymour Reitknecht, Esq.
and Howard LeShaw, CPA. The Income Tax Bureau appeared by Peter
Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner's activities as a costume and scenic
designer constituted the practice of a profession exempt from
the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Alvin Colt, filed New York State income tax resident returns for 1970 and 1972. He did not file unincorporated business tax returns for said years.

2. On June 24, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Alvin Colt, imposing unincorporated business tax on the income derived from his activities as a costume designer. In addition, adjustments pursuant to section 659 of Article 22 of the Tax Law were incorporated into the deficiency. However, that portion of the deficiency relative to Article 22 was paid and is not at issue.

3. Petitioner was both a costume and scenic designer, deriving income from these respective activities during 1970 and 1972.

4. Petitioner was a student at the Yale University School of Drama and Fine Arts and participated in an educational program which involved all aspects of theater design. Subsequently, petitioner served as an apprentice for a period of time, with a minimum of a year spent solely in preparation for an eight-hour examination administered by the United Scenic Artists of America. This examination was both written and practical and was a mandatory requirement for admission to that organization.

5. The members of the United Scenic Artists of America include both scenic and costume designers. Membership in it is a prerequisite for obtaining work on Broadway productions. Both the individual member and the theater's management are subject to the rules and regulations promulgated by the United Scenic Artists of America, which rules are incorporated into their labor contract.

6. Petitioner must conduct extensive research into the history and fashion of the period depicted in a particular production. His activities include creating, designing and sketching costumes, locating, choosing, and cutting various fabrics as well as creating sample costumes. Petitioner does not manufacture the finished product used in the particular production.

7. Petitioner has won a Tony Award for his achievements in costume designing and has been nominated several times for an Emmy Award.

8. Petitioner has designed many Broadway theater productions such as Wildcat, Destry Rides Again, The Lark, Fanny, Top Banana, Around the World, On the Town and Hellzapoppin. In addition, he has been engaged by the producers of the Phoenix Repertory Company, the National Theater Production, the Stratford Theater (HAMLET), American Ballet Theater, New York City Ballet, Ballet

Russe de Monte Carlo, New York City Opera, NBC Opera Guild, by television for The Adams Chronicles, the Tony Awards Show and other television specials and by motion picture features and City Center revivals.

9. Petitioner, Alvin Colt, derived income from his activities as a scenic designer in 1970 and 1972 in the sums of \$19,752.00 and \$16,360.65, respectively. However, each of these amounts includes a fee of \$15,672.00 for services performed as a scenic designer of a special events exhibit at Neiman Marcus, a well-known department store in Texas.

10. Each year, Neiman Marcus designated a theme for its special events exhibit. Petitioner was then required to design space, objects, and scenery, all of which would make the department store an exhibition theater.

11. Petitioner derived income from his activities as a costume designer in the sums of \$15,795.00 in 1970 and \$15,424.50 in 1972.

12. Capital was not a material income-producing factor and all income was derived from personal services actually rendered by petitioner.

13. Petitioner contended (and was supported by expert testimony) that there is no significant difference between a scenic designer (recognized by the State Tax Commission in prior cases as a profession exempt from unincorporated business tax) and a costume designer. He theorized that a scenic designer dressed the stage, whereas, a costume designer dressed the actors and actresses.

14. Although no Federal, state, or city statute regulates the activities or dictates the minimum educational requirements of a costume or scenic designer, regulations and standards have been developed and are strictly enforced by the United Scenic Artists of America.

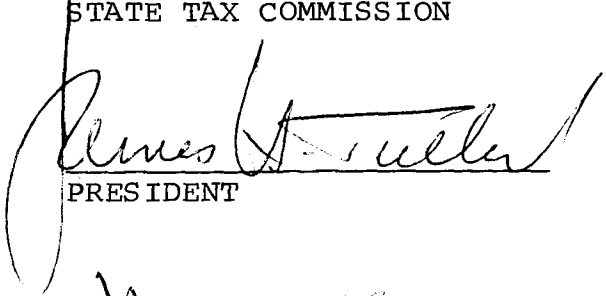
CONCLUSIONS OF LAW

A. That in view of petitioner's educational background, apprenticeship, professed knowledge and achievements, as well as the necessity of his taking a highly specialized examination and meeting the requirements of an existing standard of conduct, his activities constitute the practice of a profession in accordance with the meaning and intent of section 703(c) of the Tax Law; therefore, the income derived from his activities as a scenic and costume designer is not subject to unincorporated business tax.

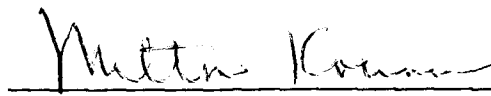
B. That the petition of Alvin Colt is granted to the extent of cancelling the unincorporated business tax and related penalty and interest stated in the Notice of Deficiency issued June 24, 1974; the Income Tax Bureau is hereby directed to accordingly modify said Notice, but that, except as so granted, the petition is denied and the Notice of Deficiency is otherwise sustained.

DATED: Albany, New York
March 15, 1979

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

SMALL CLAIMS

TA-26 (4-76) 25M

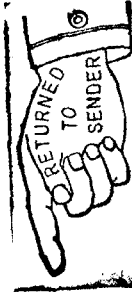
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



**Addressee unknown
NEW YORK, N. Y. 10027**

[Nat In Director]

Alvin Colt
c/o L. Arnold Weissberger, Esq.
120 E. 56th St.
New York, NY 10022

SEP 2 1976



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

to Miss Davis,.....REMAILED:.. 4/3/79

Better address.

4/3/79

Joseph Chyrywaty

M-75 (5/76)

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STATE TAX COMMISSION

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and 1972.

State of New York
County of Albany

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Sworn to before me this

3rd day of April , 1979.

Maureen J. Papineau

John Huhn