

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Carol Horn :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law
for the Years 1970 - 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Carol Horn, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carol Horn
166 E. 61st St.
New York, NY

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of

Carol Horn

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of
Personal Income Tax & UBT
under Article 22 & 23 of the Tax Law
for the Years 1970 - 1972.

State of New York
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Albert Meyerowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Albert Meyerowitz
Mach, Rosenstein & Co.
1250 Broadway
New York, NY 10001

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Carol Horn
166 E. 61st St.
New York, NY

Dear Ms. Horn:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Albert Meyerowitz
Mach, Rosenstein & Co.
1250 Broadway
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CAROL HORN	:	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, 1971 and	:	
1972.	:	

Petitioner, Carol Horn, 166 East 61st Street, New York, New York 10021, 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, 1971 and 1972 (File No. 15707).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 11, 1979 at 2:45 P.M. Petitioner appeared by Albert Meyerowitz, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities as a fashion designer from 1970 through 1972 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Carol Horn, filed New York State personal income tax returns for the years 1970 through 1972. On said returns, she designated her occupation to be that of a fashion designer. Petitioner did not file unincorporated business tax returns for said years.

2. On January 15, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, imposing additional personal income tax, based on Federal audit changes for 1970. Said Statement also imposed unincorporated business tax on income reported as business income for the years 1970 through 1972, based on petitioner's contention that her activities constituted the carrying on of an unincorporated business. Accordingly, the Bureau issued a Notice of Deficiency on June 28, 1976 for \$334.23 in personal income tax and \$2,434.66 in unincorporated business tax, plus \$1,122.42 in penalty (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) and \$772.82 in interest for a total due of \$4,664.13.

3. Petitioner is not contesting the personal income tax portion of the Notice of Deficiency which is based on the Federal audit changes.

4. Petitioner contended that she was an employee of Benson & Partners Ltd. for the years at issue, and was required to work Monday through Friday between 9:00 A.M. and 5:00 P.M.

5. A portion of amounts Benson & Partners Ltd. paid petitioner (\$6,000.00 and \$3,450.00 for 1971 and 1972, respectively) were reported on wage statements and subjected to withholding taxes. The excess over the amount reported on wage statements was paid without any withholding being deducted. This excess was reported by petitioner as part of gross receipts on her Federal Schedule 'C' (Profit (or Loss) from Business). There is no documentary evidence which shows what portion of the gross receipts is made up of the excess which was paid by Benson & Partners Ltd.

6. Petitioner also attached a withholding tax statement to her 1971 New York State income tax return, showing wages of \$1,000.00 which was issued by the Colgate-Palmolive Company. A withholding tax statement from Malcolm Starr, Inc. showing wages of \$19,225.00 was attached to her 1972 return.

7. Petitioner's Federal Schedule 'C' for the years at issue shows expenses such as rent, telephone, samples and designs, and travel and entertainment.

8. At the hearing, petitioner conceded that the income reported on Schedule C, other than the amounts received from Benson & Partners Ltd., is subject to unincorporated business tax.

9. Petitioner filed Federal Schedule "SE", self-employment tax, for all years at issue.

CONCLUSIONS OF LAW

A. That petitioner, Carol Horn, has not sustained the burden of proof which requires her to show that sufficient direction and control was exercised over her by Benson & Partners, Ltd., so as to result in an employer-employee relationship, within the meaning and intent of section 703 of the Tax Law.

B. That the income received by petitioner from Benson & Partners, Ltd. and reported on Federal Schedule 'C' during 1970 and 1972, together with the other income reported on her Federal Schedule C, constituted income from her regular business as a fashion designer, and not compensation as an employee which would be exempt from the imposition of unincorporated business tax, in accordance with the meaning of section 703(b) of the Tax Law.

C. That the petition of Carol Horn is denied and the Notice of Deficiency issued June 28, 1976 is sustained, together with such interest and penalty as may be lawfully owing.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER