

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Amerigo Ruggiano :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law :  
for the Years 1969-1970. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Amerigo Ruggiano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amerigo Ruggiano  
Palmer Ln.  
Thornwood, 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  
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Amerigo Ruggiano  
Palmer Ln.  
Thornwood, NY

Dear Mr. Ruggiano:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
AMERIGO RUGGIANO	:	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 1969 and 1970.	:	

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Petitioner, Amerigo Ruggiano, Palmer Lane, Thornwood, New York, 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 1969 and 1970 (File No. 14330).

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 May 24, 1979 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the income derived from petitioner's activities as an artist is subject to unincorporated business tax.

II. Whether petitioner is subject to a penalty pursuant to section 685(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Amerigo Ruggiano, and Dora Ruggiano, his wife, timely filed a New York State Combined Income Tax Return for 1969, on which petitioner's wife reported business income as a commercial artist. Petitioner conceded that the business income was his, and that it was reported as his wife's income in error.

2. Petitioner, Amerigo Ruggiano, and Dora Ruggiano, his wife, timely filed a joint New York State Income Tax Resident Return for 1970, on which he reported business income from his activities as a commercial artist.

3. Petitioner did not file unincorporated business tax returns for 1969 and 1970.

4. On December 1, 1972, petitioner and his wife signed a Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes for 1969. This consent extended the period for assessment to April 15, 1974 in accordance with section 683(c)(3) of the Tax Law.

5. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1969 and 1970, asserting additional personal and unincorporated tax due of \$3,479.88, plus penalty and interest. The deficiency was issued along with an explanatory Statement of Audit Changes on which:

- a. Petitioner's income, during 1969 and 1970, as a commercial artist was held subject to unincorporated business tax.
- b. Petitioner's filing status for 1969 was changed from married-filing separate to married-filing joint, on the basis that the business income belonged to petitioner and not his wife.
- c. A penalty was imposed in accordance with section 685(c) of the Tax Law for petitioner's failure to file a Declaration of Estimated Tax for 1969 and 1970.

6. Petitioner, Amerigo Ruggiano, was a self-employed commercial artist doing business under the name of "Ruggi Studios" during 1969 and 1970. His activities consisted of creating drawings for the specific purpose of promoting the sale of goods and/or services. Petitioner was renowned for his artistic skills and creativity within the advertising industry.

7. Petitioner was compensated on a fee basis by his clients without any withholding of payroll taxes. Petitioner did not file declarations of estimated tax for 1969 and 1970.

CONCLUSIONS OF LAW

A. That the performing of services in creative art which deal with the promotion of sales or services does not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law, even though the services involve the application of a specialized knowledge.

B. That petitioner, Amerigo Ruggiano's, activities as a commercial artist constituted the carrying on of an unincorporated business and that the income derived therefrom is subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

C. That petitioner, Amerigo Ruggiano, was required by section 655 of the Tax Law to file a Declaration of Estimated Tax.

D. That petitioner, Amerigo Ruggiano, is subject to a penalty pursuant to section 685(c) of the Tax Law for failure to file a Declaration of Estimated Tax.

E. That the petition of Amerigo Ruggiano is denied and the Notice of Deficiency issued March 25, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER