

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Tax
Determination A-2
Trier, Carola S.

TO: Commissioners Murphy, MacDuff and Conlon
FROM: Vincent P. Malinsux, Hearing Officer
SUBJECT: Trier, Carola S.
Petition for redetermination of deficiency

A hearing on the above matter was held before me at 80 Centre Street, New York, New York on October 24, 1966.

The question involved herein is whether petitioner's income, from a privately operated atelier or studio is exempt, under section 703(c) of the Tax Law, from unincorporated business tax as income from the practice of a profession.

Petitioner described her work in her tax returns as free-lance gymnastic teacher, and at the hearing as body conditioning, corrective work and rehabilitation. She takes care of only one person at a time and uses apparatus consisting of a frame of wood and metal pipes and a number of springs and straps. She denies practicing physio-therapy for which she is not licensed and states that her work follows physio-therapy.

A Dr. Jordan testified that he refers cases to petitioner which before he sent to the Department of Physical Medicine at the hospital where he practices and to "some other free-lance physical therapists".

Mrs. Trier's education and training for her work consisted of two years at Jooss Dance Studio operated under the Central School, Essen, Germany, early training in teaching dancers body building, "in show business" for an indeterminate length of time learning body-building techniques, and working for ten years under the supervision of one Joseph H. Pilates who is described as the inventor of the equipment and exercises used by petitioner. Pilates does not conduct a school but operates in the same manner as petitioner. He is listed in the New York City telephone directory as "Joseph H. Pilates, Gym, 939 - 8th Avenue". Her training for the massage operator's license consisted of two to five hours a week for two or three months, supplemented by studies at home. Petitioner studied anatomy with a physio-therapist and continued the study of anatomy and physiology by reading books on the subjects and has been invited by a Dr. Jordan, consulting orthopedic surgeon for Lenox Hill Hospital, to witness operations performed by him.

Petitioner does not claim to be the author of any books or published articles on her subject but was "written up in Dance Magazine", and does not claim to teach any branch of art or science.

In my opinion the petitioner has probably attained a high degree of skill but has not spelled out the protracted course of study usually associated with professions, that she has not identified herself with any institutions of higher learning and is not the author of any published works on her field such as to establish her calling as a profession.

If her work is to be considered as a profession it would undoubtedly fall into the area of physio-therapy which petitioner has denied and for which she is not licensed.

For the reasons stated above, I recommend that the decision of the Tax Commission in the above matter be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

~~REPLYING OFFICER~~

January 4, 1967

VHM:b6g

(Jan 9, 1967)

Enc.

/s/

MARTIN SCHAPIRO

~~APPROVED~~

/s/

SAUL HECKELMAN

~~APPROVED~~

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION

OF

CAROLA S. TRIER

**FOR A REDETERMINATION OF A DEFICIENCY
UNDER ARTICLE 23 OF THE TAX LAW FOR
THE YEARS 1961, 1962 AND 1963**

Carola S. Trier having filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961 and 1962 and for the year 1963, and a hearing having been held at the office of the State Tax Commission at 80 Centre Street, New York, New York on the 24th day of October, 1965 before Vincent F. Holmstrom, Hearing Officer of the Department of Taxation and Finance, and the records having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the petitioner filed New York State resident returns for the years 1961, 1962 and 1963 on which the amount shown to be due was paid.

(2) That on June 7, 1963, the State Tax Commission issued notices of deficiency in the amount of \$338.64 for the years 1961 and 1962 (file # 2-7702310) and in the amount of \$362.81 for the year 1963 (file # 3-7714901) on the ground that income received as a free-lance gymnastics teacher is income, from an unincorporated business subject to Article 23 of the Tax Law for each of the above years.

(3) That petitioner's income is derived from a privately operated atelier or studio at 200 West 98th Street, Apartment 1-B, which is also her residence.

(4) That petitioner holds a certificate to the effect that she spent two years at the Jones Dance Studio which is operated under the Central School, Bronx, Germany. She also holds a license as a massage operator from the City of New York.

(5) That the petitioner describes her work as body conditioning, corrective work and rehabilitation under the supervision of a medical doctor, and states that it is not physio-therapy but that it follows physio-therapy. She is not licensed as a physio-therapist under Article 131 of the Education Law.

(6) That the petitioner's education for her calling, in addition to her two years at Jones, consisted of early training in teaching dancers body building, in "show business" for an indeterminate length of time, learning body building techniques and working for ten years under the supervision of one Joseph E. Pilates who is described as the inventor of equipment and exercise against resistance represented by springs. Pilates does not conduct a school but operates in the same manner as the petitioner. He is listed in the New York City telephone directory as "Joseph E. Pilates, Gyn, 939 - 8th Ave.". Her training for the massage operator's license consisted of two to five hours a week for two to three months, supplemented by studies at home.

(7) That the petitioner also studied anatomy with a physio-therapist.

(8) That the petitioner also states that she continues the study of anatomy and physiology by reading books on the subjects, and has been invited by a Doctor Jordan to witness operations performed by him.

(9) That petitioner does not claim to be the author of any books or published articles on her subject but was "written up in Dance Magazine".

(10) That while petitioner's income tax return describes her as "free-lance gymnastic teacher" she disclaims that her place of business is a gymnasium, and that her work is largely rehabilitation, and she does not claim to teach any branch of art or science.

(11) That petitioner has not spelled out the protracted course of study usually associated with professions; that she has not identified herself with any institutions of higher learning and is not the author of any published works on her field of endeavor such as to establish her calling as a profession.

Based upon the foregoing findings, the State Tax Commission hereby

FINDINGS:

(A) That the notices of deficiency determining unincorporated business taxes for the years 1961, 1962 and 1963 are correct and are hereby affirmed, together with any additional interest and other amounts which may be lawfully due and owing thereon.

(B) That the taxpayer's petitions for redetermination of deficiencies for the years 1961, 1962 and 1963 be and the same are hereby denied.

Dated: Albany, New York the 12th day of January, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

/s/

JAMES R. MACDUFF

/s/

WALTER MACLYN CONLON