

DAVENPORT  
UBT - 1970

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
:  
of  
:  
Natalie P. Davenport  
:  
For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1960, 1961 :  
1962, 1963 and 1964

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Claire A. Draves , 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 30th day of November , 19 70, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Alfred N. Licalsi  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Alfred N. LiCalsi  
Main, LaFrenz & Co., CPA's  
280 Park Avenue  
New York, New York 10017  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

30th day of November , 1970.

Janet Wright

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Natalie P. Davenport

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business.  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1960, 1961, :  
1962, 1963 and 1964

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Claire A. Draves , 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 30th day of November , 1970 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Natalie P.

Davenport (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Natalie P. Davenport  
45 Sutton Place S.  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

30th day of November , 1970.

Janet Wright

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
NATALIE P. DAVENPORT : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Unincorporated :  
Business Taxes under Article 23 of :  
the Tax Law for the years 1960, 1961, :  
1962, 1963 and 1964. :

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Petitioner filed a petition for redetermination of deficiencies in unincorporated business taxes for the years 1960, 1961, 1962, 1963 and 1964.

A formal hearing was held in the offices of the State Tax Commission in the City of New York on September 9, 1969, before Francis X. Boylan, Hearing Officer. The petitioner appeared by Main Lafrentz and Company, CPA's (Anthony N. LiCalsi, Esq., Accountant). The Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi, Esq., of counsel).

FINDINGS OF FACTS

1. Petitioner timely filed New York State personal income tax returns but did not file unincorporated business tax returns for the years 1960, 1961, 1962, 1963 and 1964.

2. On September 13, 1965 the Income Tax Bureau issued a notice of determination of deficiency in unincorporated business tax under file number 3-8804215 for the years 1960, 1961 and 1962.

On February 14, 1966 the Income Tax Bureau issued a notice of determination of deficiency in unincorporated business tax under file number 2-6139969 for the years 1963 and 1964.

The Income Tax Bureau based its notices of deficiencies on its determination that the business activities of the petitioner as an interior decorator were subject to unincorporated business tax.

3. The petition for redetermination of the deficiency was timely filed.

4. The petitioner's case was based on the contention that the State Tax Commission was bound by a decision of the New York State Department of Labor, Unemployment Insurance Appeal Board, sustaining the determination of the Industrial Commissioner assessing McMiller Inc., as an employer, additional contributions for unemployment insurance for the audit period January 1, 1959 through June 30, 1965.

5. The petitioner's New York State income tax returns on Schedule A revealed reported business income for each year in question and deductions for business expenses for each year.

6. A letter from McMillen Inc. related that it did not consider petitioner as an employee, and did not exercise control over the manner of her work. McMillen Inc. did not know whether petitioner worked for others and was unacquainted with her business arrangements. Withholding was on petitioner's request to make deductions from drawings made against commission due her.

7. McMillen Inc. did not exercise any control over petitioner accepting other accounts, or in the amount of time spent at her work, or control over her movements such as traveling.

8. Petitioner did not testify although, a continuance of one month was granted for this purpose if desired.

9. The determination of the New York State Department of Labor, Unemployment Insurance Appeal Board, is not binding on the State Tax Commission. The scope, objective and purpose of the two statutes, the Tax Law and the Unemployment Insurance Law are different. The

Income Tax Bureau was not a party to the proceedings before the New York State, Department of Labor. The New York State Department of Labor decision indicates petitioner and her representatives did not appear or appeal. McMillen Inc. does not consider the petitioner an employee. Petitioner lists her interior decorating income as business income and deducts business expenses.

10. Petitioner income as an interior decorator is subject to the unincorporated business tax.

11. Petitioner acted in good faith in treating such income as not subject to the unincorporated business tax.

DECISION


A. Petitioner's income from interior decorating is subject to unincorporated business tax for the years 1960, 1961, 1962, 1963 and 1964.

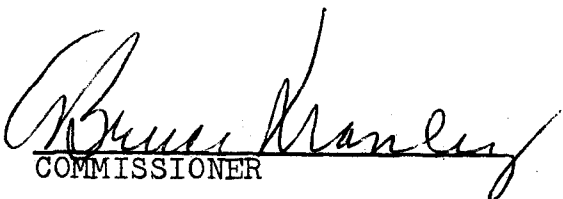
B. The deficiencies determined against the petitioner under file numbered 3-8804215 and file numbered 2-6139969 are correct and sustained, except that the penalties are cancelled and remanded.

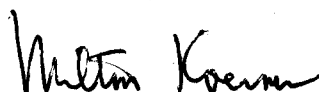
C. Pursuant to Section 684 of the Tax Law, interest shall be added to the total amount due until date of payment.

DATED: Albany, New York  
November 27, 1970

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER