

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - 1100 Code

UBT

23

8105

In the Matter of the Application :
of :
MARTY WHITE and RHODA WHITE :
For a Redetermination of a Deficiency :
or for a Refund of Unincorporated :
Business Taxes under Article 23 of the :
Tax Law for the Year 1960 :

DECISION

ON

CITATIONS

DEFAULT

REMARKS

The petitioner having filed a petition for a redetermination of a deficiency or for a refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1960 and a hearing having been duly scheduled at the offices of the Department of Taxation and Finance at 80 Centre Street, New York, New York, on January 7, 1969, before Francis X. Boylan, Esq., Hearing Officer, and the Department having appeared by E. H. Best, Counsel, (Alexander Weiss, Esq. of counsel) and there having been no appearance on behalf of the petitioner, and the record having been duly examined and considered,

The State Tax Commission

FINDS that:

1. The failure of any appearance on behalf of the petitioner at the scheduled hearing constituted a default.

2. By a notice of deficiency, dated September 13, 1965, and an attached statement of audit changes, the State Tax Commission notified petitioner that it determined that there was a deficiency of unincorporated business taxes for the year 1960 in the amount of \$538.43 together with interest in the amount of \$142.55, to a total of \$680.98 for the said year as of the date of the said notice.

3. It is found on review that the said determination of a deficiency or deficiencies was not unlawful or incorrect.

Petitioner's activities in the field of music, which basically was a service of supplying dance orchestras for social occasions on order, was a commercial undertaking which went beyond the usual activity of an orchestra leader furnishing a single orchestra's music for a fee or equivalent financial arrangements, and leading and supervising his musicians; and, essentially petitioner's services were not "the practice of" the profession of a musician or music conductor purely enough to qualify as such apart from the further quantitative criteria set forth in the section (T.L. §703(c)) governing the exemption for activities constituting the practice of a profession other than the named professions (of law, medicine, dentistry, and architecture).

Accordingly, the State Tax Commission hereby
DECIDES:

A. That the said deficiency set forth in paragraph two is affirmed and constitutes an assessment of taxes as of the date of the said notice thereof. The said assessment is subject to further interest as provided by Tax Law (§§684 and 685, and §722).

DATED: Albany, New York

STATE TAX COMMISSION

March 24, 1970

Norman Galloran

PRESIDENT

Bruce M. ...

COMMISSIONER

W. H. K...

COMMISSIONER