

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Arthur Cantor

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article(s) 16-A of the  
Tax Law for the (Year(s) 1956 & 1957;

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

State of New York  
County of Albany

Martha Funaro , 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 29th day of March , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Morton Geller, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Morton Geller, C.P.A.  
Geller and Geller  
290 Madison Avenue  
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

29th day of March , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

Arthur Cantor

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
Taxes under Article(s) 16-A of the  
Tax Law for the (Year(s) 1956 & 1957 :

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

State of New York  
County of Albany

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1 West 72nd Street  
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

29th day of March , 1971.

James Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
ARTHUR CANTOR : DETERMINATION  
for Revision or Refund of Unincorporated :  
Business Taxes under Article 16-A of the :  
Tax Law for the Years 1956 and 1957. :

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Taxpayer filed an application for revision of unincorporated business taxes under Article 16-A of the Tax Law for the years 1956 and 1957. A formal hearing was held before Martin Schapiro, Hearing Officer, at the offices of the State Tax Commission in the City of Albany on September 18, 1964. Taxpayer was represented by Mortin Geller, C.P.A.

FINDINGS OF FACT

1. Taxpayer filed a New York State personal income and an unincorporated business tax return for the year 1956. For the year 1957, taxpayer filed a personal income tax return but failed to file any unincorporated business tax return.

2. On September 14, 1959, the Department of Taxation and Finance issued Notices of Additional assessments No. B661604 for the year 1956, in the amount of \$1,017.79 and B661605 in the amount of \$962.73 for the year 1957.

The assessments were based on a finding by the Income Tax Bureau that the business activities engaged in by the taxpayer constitute the carrying on of an unincorporated business and all income derived therefrom is subject to the unincorporated business tax under Article 16-A of the Tax Law.

3. Taxpayer describes himself as a Press Agent on his income tax returns. He is a member of the Association of Theatrical Press Agents Union. There is a standard contract used by the taxpayer and each principal. This agreement specifies the minimum terms under which theatrical press agents may be retained. The

agreement permits press agents to serve multiple principals. Deductions are made by the principals for withholding income and social security taxes.

4. In addition to his activities as a press agent, under contract with twelve principals in 1956 and eight in 1957, the taxpayer during 1956 was in his own independent business as a press agent obtaining compensation from various principals. The taxpayer operated only as a press agent in 1957.

5. Taxpayer maintained an office for the conduct of his business affairs.

6. Taxpayer paid his own business expenses.

7. Taxpayer has not met his burden of proving that he was subject to any supervision, direction or control consistent with an employer-employee relationship.

DETERMINATION

A. The business activities of the taxpayer during the years 1956 and 1957, constitute the carrying on of an unincorporated business as a publicity agent, and the income derived therefrom is subject to the unincorporated business tax.

B. The assessment is sustained and the petition is denied.

DATED: Albany, New York  
*March 29, 1971*

STATE TAX COMMISSION

*Robert J. Gallivan*  
COMMISSIONER

*Robert J. Gallivan*  
COMMISSIONER

*William Koerner*  
COMMISSIONER

*Cantor Arthur*  
*U.B.T.*  
*1971*

May 14, 1971

Morton Geller, Esq.  
290 Madison Avenue  
New York, New York 10017

Re: Arthur Cantor  
Determination, Years 1956 and 1957  
Mailed on March 29, 1971

Dear Sir:

Your letter to Commissioner Gallman was referred to me for reply.

Your attention is again respectfully directed to the requirement that any proceeding in court to review an adverse determination must be commenced within 90 days after the mailing of the notice.

We are sorry for the delay in issuing this determination which was due to an unusually heavy workload of formal hearings and an acute shortage of personnel.

Very truly yours,

EDWARD ROOK  
Secretary to the  
State Tax Commission

cc: Commissioner Gallman  
ER/maf

Forward original and duplicate of this form with attachments

TO:

*Mr. Rook*

BUREAU  
OR OFFICE

FOR:

1. ☐ Your Information
2. ☐ Written Comments  
For Review and
3. ☒ Reply for ~~MR.~~ signature  
*N.G.*
4. ☐ Your Attention And Reply Direct  
To Correspondent
5. ☐ Discussion With J.H.M.

**Material From The Governor's Office:**

6. ☐ Reply for J.H.M. signature  
and forward original and 4 copies  
to Commissioner's Office
7. ☐ Suggested reply for use by the  
Governor's Office and forward original  
and 3 copies to Commissioner's Office

Name of Correspondent

**Morton Geller, Esq.**

Address **290 Madison Avenue**

**New York, New York 10017**

RE: **Arthur Cantor -- Determination Unincorporated Business Tax for the years 1956 and 1957**

DATE: **5/13/71**

Please prepare an original and 3 copies of all written material forwarded to this office except as otherwise noted. Also, kindly return original copy of this memo with any material forwarded in regard to the matter in upper right box.

OTHER INFORMATION:

Joseph H. Murphy

*Morton Geller*  
*Counsellor at Law*

TELEPHONE 212 689-1127  
CABLE "GELANDGEL NEW YORK"  
TELEX 420595

SEYMOUR H. FANG

290 MADISON AVENUE  
NEW YORK, N. Y. 10017

*M. Geller*  
*for review*  
*5 pages*  
*orig.*  
May 1, 1971

Mr. Norman F. Gallman,  
Acting President  
State Tax Commission  
State Campus  
Albany, New York 12226

Re: Arthur Cantor  
Determination Unincorporated  
Business Tax for the Years  
1956 and 1957

Dear Sir:

On or about April 2nd or 3rd of this year, I received the enclosed letter dated March 29, 1970. Affixed to this letter was a "Determination" stating that an assessment issued in 1959 by the Department of Taxation and Finance was sustained. The Determination also denied a petition filed by the taxpayer. This petition resulted in a formal hearing in September 1964. From the date of that hearing in 1964 up to the current date, a period of more than six and one-half years, neither the taxpayer nor I heard anything from the Tax Commission concerning this hearing. Based upon the information that we had submitted by prior experience in one or two similar matters, we assumed that our petition had been accepted and the assessment abated.

Before proceeding to take any formal legal steps to review the Determination submitted to us, I respectfully request a reassessment of your Determination. On any equitable ground, one would find great difficulty in justifying this great lapse of time. Any number of changes of position could have been taken by the taxpayer relying upon your lack of communication. I shudder to think what position the Commission would take towards a taxpayer who did not respond for six and one-half years after a hearing. Certainly, the doctrine of "LACHES" would be thoughtfully considered by any court of competent jurisdiction.

I have considered corresponding with various New York State professional organizations interested in the administration of taxation as well as your political supervisors. However,

*Morton Geller*

Mr. Norman F. Gallman,  
Acting President  
State Tax Commission

May 1, 1971

-2-

I wish to extend the courtesy of reply to the State Tax Commission before considering any alternative steps.

Under the circumstances, I feel that the only equitable treatment for my client is that the assessment be abated, aside from the technical grounds of his position. Incidentally, it is our position that the taxpayer was not carrying on a business during the years in question and therefore should not have been subjected to the Unincorporated Business Tax.

I would appreciate your early response.

Sincerely,

MG:rub  
Enc.





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

March 29, 1970

Mr. Arthur Cantor  
1 West 72nd Street  
New York, New York

Dear Mr. Cantor:

Please take notice of the **Determination** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 386j**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **90 Days** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

Lawrence A. Newman  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

Morton, Fred (mfc)

1105 6-25-71

Re: Arthur Cantos DT

4/15/69

3-29-71

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(YIV) 689-1120

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*Morton Geller*  
*Counsellor at Law*

TELEPHONE 212 689-1127  
CABLE "GELANDGEL NEW YORK"  
TELEX 420595

SEYMOUR H. FANG

290 MADISON AVENUE  
NEW YORK, N. Y. 10017

*Answered  
by Telephone  
June 25, 1971 -  
advised they must  
proceed by Oct 78*

Mr. Edward Rook  
Secretary to the State Tax Commission  
State of New York  
Department of Taxation & Finance  
Albany, N.Y.

May 21, 1971

RE: Arthur Cantor  
Determination, Year 1956 and 1957

Dear Sir:

This is to acknowledge your letter of May 14, 1971, with regard to Arthur Cantor and the Unincorporated Business Tax for the years 1956 and 1957. Before incurring an expense for all concerned, which would be required by a beginning of Court proceedings, I should like to call your attention to the 'Determination' of the State Tax Commission, dated April 30, 1968, which appears at Paragraph 19-507.71 in the matter "Petition of Richard and Elizabeth Maney".

In this matter, the Tax Commission held that the Unincorporated Business Tax was not properly assessed against a press agent who is acting as an employee and not as an independent contractor. The situation with regard to Arthur Cantor is no different. He is a member of the same Union and performs services identical to Mr. Maney.

I would appreciate your prompt response.

Very truly yours,

*Morton Geller*  
Morton Geller

MG:me