

STATE OF NEW YORK
STATE TAX COMMISSION

Fiorentino Imero
U. B. T.
2 1971

In the Matter of the Petition

of

IMERO O. FIORENTINO

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) 1962.

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

State of New York
County of Albany

Linda Wilson, 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 13th day of August, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon IMERO O.

FIORENTINO (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Imero O. Fiorentino
58 West 68 Street
New York, New York 10023

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

13th day of August, 1971

Rae Zimmerman

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IMERO O. FIORENTINO

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) 1962.

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

State of New York
County of Albany

Linda Wilson, 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 13th day of August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon GABRIEL T. PAP, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Gabriel T. Pap, Esq.
51 East 67 Street
New York, New York 10021

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

13th day of August, 1971.

Rae Zimmerman

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	DECISION
IMERO O. FIORENTINO	:	
	:	
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law for	:	
the Year 1962.	:	
	:	

Imero O. Fiorentino filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1962. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on July 7, 1969, and continued on October 31, 1969. The petitioner was represented by Gabriel T. Pap, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., and Albert J. Rossi, Esq., of Counsel). On April 23, 1971, the petitioner's representative requested the State Tax Commission to render a decision "on the basis of the record as it is."

ISSUE

Whether the income derived from the petitioner's business activities, described as "lighting designer and consultant," is subject to the unincorporated business tax.

FINDINGS OF FACT

1. The petitioner, Imero O. Fiorentino, and his wife, Carole G., filed a New York State income tax resident return for the year 1962.

The petitioner did not file an unincorporated business tax return for the year 1962.

2. On February 28, 1966, the Income Tax Bureau issued a Notice of Deficiency, under File No. 2-2363798, in the amount of \$287.34, plus statutory interest.

3. On March 24, 1966, a petition for redetermination of the deficiency or for refund was filed.

4. The petitioner is a lighting designer and lighting consultant to the television networks. He is not a union electrician and does not handle the equipment on any assignment. The petitioner studies the subject to be televised and the surrounding scenery. He recommends and directs the type of lighting and the placement of the equipment.

5. A degree of imagination, initiative and ingenuity is necessary to present a lighting environment in which the performers and stage settings will be most effective in television performances, and a certain amount of study and inventiveness is necessary to overcome problems in unique situations.

6. The petitioner is extending a service which is an adjunct to the television performers, and is not engaged in an exempt profession within the meaning and intent of Article 23 of the Tax Law.

7. The petitioner is not an employee of his principals for whom he performs the services in issue.

DECISION

A. The income derived from the petitioner's business activities, described as "lighting designer and consultant," is subject to the unincorporated business tax.

B. The deficiency is correct and is sustained, and the petition is denied.

DATED: Albany, New York

August 13, 1971.

STATE TAX COMMISSION

Norman G. Glickman

COMMISSIONER

Bruce H. Stanley

COMMISSIONER

Milton Koehn

COMMISSIONER