

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HENRI W. GINE

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) 1963.

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

State of New York
County of Albany

Rae Zimmerman , 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 28th day of December , 19 71 she served the within
Notice of Decision (or Determination) by (certified) mail upon Henry W.
Gine
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Henry W. Gine
311 West 55th 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

28th day of December , 1971.

Harold L. Lando

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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HENRI W. GINE

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) 1963.

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

State of New York
County of Albany

Rae Zimmerman 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 28th day of December , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Martin F.
Carney

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Martin F. Carney
1955 Merrick Road
Merrick, 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

28th day of December , 1971.

[Signature]

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HENRI W. GINE	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1963.	:	

Henri W. Gine filed a petition under section 689 of the Tax Law for a redetermination of a deficiency in personal income tax for the year 1963. A hearing was duly held on November 17, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Martin F. Carney, C.P.A. appeared for petitioner and Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether certain sums were received by the petitioner for services as an employee or as an independent contractor and if received as an employee, whether under section 703(b) of the Tax Law such sums constituted part of the business regularly carried on by petitioner.

FINDINGS OF FACT

1. Mr. Gine is an agent for night club performers, for several principals. He concedes that receipts of \$25,364.71 from several of those principals less deductions is subject to unincorporated business tax.

2. Mr. Gine received gross wages of \$2,800.00 from Park Lake Enterprises and \$6,300.00 from Essex Productions both California

based corporations. He received W-2 forms for these amounts and social security taxes were withheld. These sums were paid to petitioner for services in meeting and entertaining persons visiting New York City.

3. Petitioner did not appear at the hearing and the representative was not well acquainted with the details of the petitioner's activities and could testify only in the most conclusory fashion.

4. The deficiency asserted by notice dated March 11, 1968, is in the sum of \$241.26 plus a penalty of \$60.37 and interest of \$56.44 for a total of \$358.02.

5. The penalty was computed at 25% of the deficiency under section 685(a) of the Tax Law for the failure to file a return. Petitioner did not contest this penalty at the hearing and, in fact, admitted that some tax was due.

CONCLUSIONS OF LAW

A. The petitioner has not carried the burden of proof that the deficiency notice is incorrect.

DECISION

The petition is denied and the deficiency is affirmed in all respects and shall bear interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

December 28, 1971

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Barbara M. Muley
COMMISSIONER

Milton Korman
COMMISSIONER