

STATE OF NEW YORK
STATE TAX COMMISSION

Kahn & Jacobs
0.2-5
1971

In the Matter of the Petition

of

Kahn & Jacobs

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) f/y/e Oct. 30, 1961

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 12th day of April , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon George A.
Spiegelberg, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: George A. Spiegelberg, Esq.
Strasser, Spiegelberg, Fried & Frank
120 Broadway
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

12th day of April , 1971.

James Alan Ritten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Kahn & Jacobs

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) f/y/e Oct. 30, 1961

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 12th day of April , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Kahn & Jacobs

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Kahn & Jacobs
2 Park 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

12th day of April , 1971.

Joyce S. Van Allen

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
KAHN & JACOBS : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the fiscal year ending October 30, :
1961. :

The taxpayer petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the fiscal year ending October 30, 1961. A formal hearing was held before Martin Shapiro, Hearing Officer, in the offices of the State Tax Commission in the City of New York on December 8, 1965. The taxpayer was represented by Strasser, Spiegelberg, Fried & Frank, Esqs., (George A. Spiegelberg, Esq. of Counsel).

FINDINGS OF FACT

1. The issue in this case is whether the activities of the taxpayer constitute the practice of architecture under section 703 of the Tax Law, thereby exempting the taxpayer from unincorporated business taxes.

2. The taxpayer is a partnership, engaged in the practice of architecture. For the fiscal year in question, the taxpayer-partnership filed a partnership return on which the following were listed as partners, along with their respective partnership interest: Robert A. Jacobs (45%), Ely J. Kahn (25%), James B. Newman (10%), Pierre A. Bezy (10%), and Roy S. Bent (10%). Neither Mr. Bezy nor Mr. Bent were licensed by the State of New York to practice architecture.

3. An audit of the petitioner's tax return resulted in a determination that the business activities of the petitioner constituted the carrying on of an unincorporated business. Accordingly, deficiency notice, File No. 2346 dated October 5, 1964, was issued in the amount of \$6,958.36 plus interest. The taxpayer-partnership timely filed the equivalent of a petition for redetermination of the deficiency.

4. Section 7302 of the Education Law prohibits the practice of architecture except by qualified architects duly licensed by the State of New York. Section 7209(2) provides that a partnership between one or several architects is not prohibited when all the partners have been duly licensed by the State of New York.

DETERMINATION


A. The business activities of the taxpayer-partnership constitute the carrying on of an unincorporated business within the meaning and intent of Article 23 of the Tax Law and the resulting net income is subject to the unincorporated business tax.

B. The petition is therefore denied and the deficiency is sustained.

DATED: Albany, New York

April 12, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER