

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED STERN

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

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 28th day of December , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Alfred Stern

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Alfred Stern
408 West 57th 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.

Wae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED STERN

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

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 24th day of January , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Jesse Comenetz

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

Jesse Comenetz
663 Fifth 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

24th day of January , 19 72

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED STERN

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

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 28th day of December , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jesse Comenetz

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jesse Comenetz
366 Fifth 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

28th day of December , 1971.

Walter Zimmerman

Martha Funaro



DEC 30 1971

2858



STATE TAX COMMISSION

In the Matter of the Petition :
:
of :
:
ALFRED STERN :
:
for Redetermination of Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Year 1962. :
:

ISSUES

II. If the aforesaid activities of petitioner, Alfred Stern, during the year 1962 did not constitute the practice of a profession, then were the services rendered by him as an employee of Robinson-Capsis-Stern Associates, Inc. so interrelated and integrated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, Alfred Stern, filed a New York State income tax resident return for the year 1962. He did not file a New York State unincorporated business tax return for said year.

2. On February 20, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Alfred Stern, imposing unincorporated business tax upon his business activities during the year 1962 upon the grounds that his activities as an industrial showman constituted the carrying on of an unincorporated business and that his income derived therefrom was subject to unincorporated business tax pursuant to Article 23 of the Tax Law and accordingly issued a Notice of Deficiency in the sum of \$117.72.

3. Robinson-Capsis-Stern Associates, Inc. entered into a contract with the Seattle World's Fair for the production of the fair theme show. The corporation was formed because the Seattle World's Fair would not enter into the contract with a noncorporate entity. Petitioner, Alfred Stern, wrote the script for and directed the theme show for the fair. He received fees from Robinson-Capsis-Stern Associates, Inc. during the year 1962 totaling \$20,000.00 for his services in writing the script. He received a salary of \$7,000.00 from said corporation for his services for directing and producing said show. Federal and New York State income taxes and social security tax were withheld from the salary paid to him. He was an officer and stockholder of said corporation. In addition, he received \$3,908.31 in fees for services rendered as a consultant on the direction and production of theme shows for the West Virginia

Centennial Commission, The New Jersey Tercentenary Commission, and other miscellaneous governmental and industrial groups. On Schedule "C" of his federal income tax return, he deducted business expenses incurred totaling \$14,626.00 of which \$11,336.00 was allowed by the Internal Revenue Service on the audit of his federal income tax return. The entities from whom he received a salary and fees did not exercise substantial direction or control over his activities as a writer or producer. His income was derived from personal services rendered. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Alfred Stern, during the year 1962 as a writer and director of theme shows for governmental and industrial entities in connection with fairs and centennials, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the services rendered by petitioner, Alfred Stern, during the year 1962 as an employee of Robinson-Capsis-Stern Associates, Inc. were so integrated and interrelated with his activities in connection with unincorporated business as a writer, consultant and producer of theme shows for governmental and industrial entities as to constitute part of a business regularly carried on by him and, therefore, the salary received by him for services as an employee of said corporation was not exempt from the imposition of unincorporated business tax in

accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the aforesaid activities of petitioner, Alfred Stern, during the year 1962 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That the petition of Alfred Stern is denied and the Notice of Deficiency issued February 20, 1967, is sustained.

DATED: Albany, New York

December 28, 1971

STATE TAX COMMISSION

Norman J. Gelman
COMMISSIONER

Bruce Maxwell
COMMISSIONER

Milton Koenig
COMMISSIONER