

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES STOUT

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) 1965 :

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 October , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon James Stout

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

wrapper addressed as follows: James Stout
13-39 122nd Street
College Point, 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 October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES STOUT

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) 1965

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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 October , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Alvin D.

Mintz (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Alvin D. Mintz
132 Hibernia Way
Freehold, New Jersey 07728

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 October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES STOUT : DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1965. :

Petitioner, James Stout, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1965. (File No. 46029038). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on August 16, 1971, at 1:30 P.M. Petitioner appeared by Alvin D. Mintz, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Did petitioner, James Stout's, activities as an embalmer during the year 1965 constitute the practice of a profession?

II. Did petitioner, James Stout, have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1965?

FINDINGS OF FACT

1. Petitioner, James Stout, and his wife filed a New York State income tax resident return for the year 1965. He did not file a New York State unincorporated business tax return for said year.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, James Stout,

imposing unincorporated business tax upon the income received by him from his activities as an embalmer during the year 1965. It also imposed a penalty of \$35.67 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$209.21.

3. During the year 1965, petitioner, James Stout, was an embalmer. In the practice of his occupation, he removed the body fluids of deceased persons and replaced them with preservative fluids. He had to have knowledge in the fields of anatomy, chemistry and pathology in order to determine what methods and materials to use in the performance of his duties.

4. Petitioner, James Stout, was a graduate of the American Academy McAllister Institute of Funeral Service, Inc. He completed a two year course of study in the art of embalming and allied subjects at the school. He was licensed by the Department of Health of the State of New York. He has not written any books, taught any courses or given any lectures on embalming.

5. During the year 1965, petitioner, James Stout's, income as an embalmer was derived solely from personal services rendered. Capital was not a material income producing factor.

6. Petitioner, James Stout, was advised by his accountant that he was not required to file a New York State unincorporated business tax return for the year 1965.

CONCLUSIONS OF LAW

A. That the activities of petitioner, James Stout, as an embalmer during the year 1965, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, James Stout, during the year 1965, 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.

C. That petitioner, James Stout, had reasonable cause for not filing a New York State unincorporated business tax return for the year 1965, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of James Stout is granted to the extent of cancelling the penalty imposed for the year 1965 pursuant to section 685(a) of the Tax Law and the Notice of Deficiency issued November 24, 1969, is reduced from \$209.21 to \$173.54 together with such interest as may be due from November 24, 1969, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 29, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER