

STATE OF NEW YORK
STATE TAX COMMISSION

Williams Emmett
V.B.T.
1971

In the Matter of the Petition

of

Emmett W. Williams

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

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 & 1963;

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 March , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jack Battaglia,
Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jack Bataglia
Rubin and Levey
950 Crossroads Building
2 Main Street East
Rochester, New York 14614
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 March , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of March , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Emmett W.
Williams (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Emmett W. Williams
1630 Lake Road
Webster, 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
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Sworn to before me this

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Linda Wilson

Martha Funaro

In the Matter of the Petition
of

EMMETT W. WILLIAMS

DECISION

for Redetermination of Deficiency
or for Refund of Unincorporated
Business Taxes for the years 1962
and 1963.

Emmett W. Williams, timely filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1962 and 1963. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of Rochester, New York, on June 17, 1970. The petitioner appeared and was represented by Rubin and Levey, Esq. (Jack Battaglia, Esq., of Counsel). The Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies Esq., of Counsel).

FINDINGS OF FACTS

1. The petitioner, and his wife, Betty Williams, filed New York State Income Tax Resident returns for the years 1962 and 1963. The petitioner did not file unincorporated business tax returns for the years 1962 and 1963.

2. On February 28, 1966, the Income Tax Bureau issued a notice of deficiency against the petitioner under file numbered 3-6260682 for the years 1962 and 1963, in the amount of \$681.49, plus statutory interest.

The deficiency was based on a finding by the Income Tax Bureau that the petitioner's business activities constituted the carrying on of an unincorporated business and the income derived from this source was subject to the unincorporated business tax.

3. The petitioner graduated from a two year school of business with major courses in accounting. Subsequently, the petitioner was an employee, successively of B. Forman Company and Raye Namrof, Inc. Both of these corporations were generally owned by the same stockholders.

While the taxpayer was employed by Raye Namrof, Inc., he performed accounting, rent collection, and tax functions for several entities which were owned either by B. Forman Co. or the major stockholders of Forman and Namrof.

4. During the years 1962 and 1963, the petitioner continued to perform services for these related interests. However, the petitioner no longer received a salary. Instead, the compensation for petitioner's services was allocated on the basis of work performed for each entity, and a direct payment procedure was adopted whereby each entity compensated him for the work performed. The petitioner, in turn, was expected to pay for any operating expenses that he might incur. It was not proven that any of the entities withheld income taxes, social security taxes, or reported these payments for payroll tax purposes.

5. During the years 1962 and 1963, the petitioner reported these payments on U. S. Form 1040 Schedule "c", Profit from Business or Profession, as gross receipts, and deducted therefrom various business expenses, including depreciation on office equipment, rent, wages, automobile, travel, and payroll taxes, and, in addition, executed a self-employment income report.

6. The petitioner is not licensed as a public accountant in the State of New York, nor did he seek or accept clients from the general public.

7. The petitioner has failed to prove that his relationship with the business entities for whom he provided services, was consistent with an employer-employee relationship.

8. The petitioner was not engaged in the practice of an exempt profession within the meaning and intent of Article 23 of the Tax Law.

DECISION

A. The business activities of the petitioner for the years 1962 and 1963, characterized on the tax returns as "accounting," constituted the carrying on of an unincorporated business within the meaning and intent of Article 23 of the Tax Law, and the income derived therefrom

was subject to the unincorporated business tax.

B. The notice of deficiency is sustained and the petition is denied.

DATED: Albany, New York
March 29, 1971

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Mancory

COMMISSIONER

Milton Kaim

COMMISSIONER