

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NICHOLAS T. ARGIRO

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) 1961, 1962 & 1963

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 3rd day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Nicholas T. Argiro

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Nicholas T. Argiro
Box 365A, Route 1
Highland, 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

3rd day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NICHOLAS T. ARGIRO

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) 1961, 1962 :
and 1963

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

State of New York
County of Albany

Lynn Wilson , 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 3rd day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon CHARLES L.
MANDELSTAM, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Charles L. Mandelstam, Esq.
22 East 40th Street
New York, New York 10017

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

3rd day of August , 1972.

Maitha F. Funnaro

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 3, 1972

Mr. Nicholas T. Argiro
Box 365A, Route 1
Highland, New York

Dear Mr. Argiro:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Paul E. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
NICHOLAS T. ARGIRO : DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1961, 1962 and 1963. :

Petitioner, Nicholas T. Argiro, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961, 1962 and 1963. (File No. 3-7168358). 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 December 13, 1971, at 3:00 P.M. Petitioner appeared by Charles L. Mandelstam, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Did petitioner, Nicholas T. Argiro's activities as a toy designer during the years 1961, 1962 and 1963, constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioner, Nicholas T. Argiro, filed New York State income tax resident returns for the years 1961, 1962 and 1963. He did not file New York State unincorporated business tax returns for said years.
2. On April 11, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Nicholas T. Argiro, imposing unincorporated business tax upon the income received by him from his activities as a toy designer during the years 1961, 1962 and 1963. It also imposed additional personal income tax for the years

1962 and 1963. The assessment of additional personal income tax for said years is not being contested by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$6,591.96.

3. Petitioner, Nicholas T. Argiro, was a toy designer during the years 1961, 1962 and 1963. He would be asked to design a particular type of toy by a toy manufacturer. He would then prepare sketches and a mock-up of his idea which he would present to the company. If the idea was accepted, he would produce more extensive designs and a working prototype. He then would apply for a patent on the toy. He would assign the patent or any rights he had in the toy to the toy company in consideration for a royalty based upon the volume of sales of the toy. He had to keep the toys that he designed within cost limits set by the manufacturer.

4. Petitioner, Nicholas T. Argiro, received a bachelor's degree in industrial design from Syracuse University in 1952. He worked as an industrial designer for Raymond Spellman and Carl Otto from 1952 to 1956. During said period he designed dictating equipment, I.B.M. typewriters and electric shavers. He began designing toys in 1956.

5. Petitioner, Nicholas T. Argiro's income as a toy designer during the years 1961, 1962 and 1963 was derived solely from personal services rendered. Capital was not a material income producing factor.

6. Petitioner, Nicholas T. Argiro, contended that the computation of unincorporated business tax due as set forth in the Statement of Audit Changes was incorrect. He failed to submit any evidence to show that said computation was incorrect.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Nicholas T. Argiro, as a toy designer during the years 1961, 1962 and 1963, 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, Nicholas T. Argiro, during the years 1961, 1962 and 1963, 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 the computation of the unincorporated business tax due from petitioner, Nicholas T. Argiro, for the years 1961, 1962 and 1963, as set forth in the Statement of Audit Changes dated April 11, 1966, is correct.

D. That the petition of Nicholas T. Argiro is denied, and the Notice of Deficiency issued April 11, 1966, is sustained.

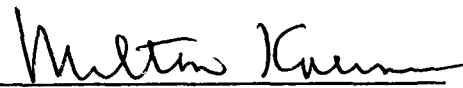
DATED: Albany, New York

August 3, 1972.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER