

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK FURIO

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) 1964 and 1965

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 27th day of July, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon FRANK FURIO

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

70 West 39th Street
New York, New York 10000

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

27th day of July, 1972

Joetha Furias

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK FURIO

For a Redetermination of a Deficiency or
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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 27th day of July, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon IRWIN PLOSS, C.P.A.

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

27th day of July, 1972

Irwin Ploss

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 27, 1972

Mr. Frank Furio
70 West 39th Street
New York, New York 10000

Dear Mr. Furio:

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 decision must be commenced
within **4 months** after 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 relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK FURIO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964 and 1965.	:	

Petitioner, Frank Furio, 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 1964 and 1965. (File No. 46512656). 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 November 16, 1971, at 2:45 P.M. Petitioner appeared by Irwin Ploss, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Did all of petitioner, Frank Furio's activities as a commercial artist during the years 1964 and 1965 constitute the carrying on of an unincorporated business?

II. Did petitioner, Frank Furio, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1964 and 1965?

FINDINGS OF FACT

1. Petitioner, Frank Furio, and his wife filed New York State income tax resident returns for the years 1964 and 1965. He did

not file New York State unincorporated business tax returns for said years.

2. On September 28, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Frank Furio, imposing unincorporated business tax upon the income received by him from his activities as a commercial artist during the years 1964 and 1965. It also imposed a penalty of \$329.12 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,045.73.

3. Petitioner, Frank Furio, was a commercial artist during the years 1964 and 1965. His income as a commercial artist was derived from two types of activities. The first type of activity consisted of being retained by clients to create or suggest approaches to film or slide shows. Outside services would then be engaged by either him or the client retaining him to produce the product. His gross receipts from this type of activity was \$7,567.65 in 1964 and \$8,616.00 in 1965. He was retained by seven firms in 1964 and eight firms in 1965 to do this type of commercial art work. The work was performed primarily in his home.

4. The second type of activity performed by petitioner, Frank Furio, during the years 1964 and 1965 consisted of rendering art work for slides. It was a technique commonly known as "board work". He was given tissue drawings by the producer of the slides which he colored in through the use of colored paper or other art materials. He was instructed by the producer as to what color, style, and technique to use. He was paid on an hourly basis. He performed

some of the work at the office of the producer and some of the work at home. His gross receipts from this type of activity was \$37,352.50 in 1964 and \$25,033.50 in 1965. He was retained by six different firms to do this type of work. In addition, he did similar work in 1964 in connection with book designs resulting in a fee of \$5,948.04. The firms for whom he performed these services did not withhold Federal or New York State income taxes or social security tax from the fees paid to him. If he was unable to handle all of the work given to him by a firm, he would subcontract out the work to other commercial artists. He was not reimbursed for his expenses. He deducted his business expenses on Schedule "C" of his federal income tax returns.

5. Petitioner, Frank Furio, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1964 and 1965.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Frank Furio, from the various firms for whom he rendered services during the years 1964 and 1965 constituted income from his regular business as a commercial artist and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Frank Furio, 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, Frank Furio, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1964 and 1965, and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Frank Furio is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1964 and 1965 and the Notice of Deficiency issued September 28, 1970, is reduced from \$2,045.73 to \$1,716.61 together with such interest as may be due from September 28, 1970, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

July 27, 1972.

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Breide Stanley

COMMISSIONER

Milton Koenig

COMMISSIONER