

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT MATTER

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article(s) 16-A of the  
Tax Law for the (Year(s) 1953, 1954, :  
1955, and 1966.

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 5th day of November , 19 73, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Herbert Matter

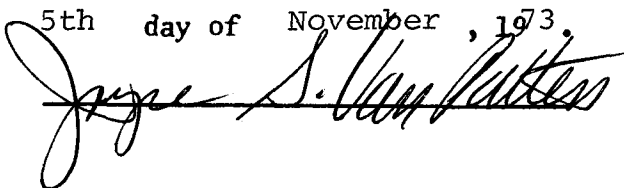
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Herbert Matter  
19 MacDougal Alley  
New York 11, New York

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

5th day of November , 1973.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article(s) 16-A of the  
Tax Law for the (Year(s) 1953, 1954, :  
1955 & 1956.

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

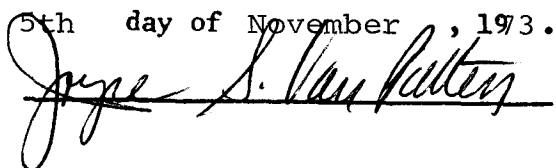
State of New York  
County of Albany

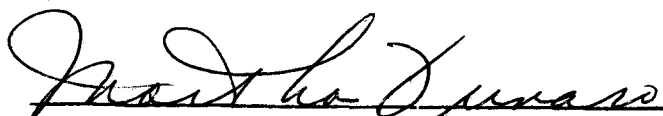
Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 5th day of November , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Franklin R.  
Weissberg, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Franklin R. Weissberg  
Colton & Fernbach  
745 Fifth Avenue  
New York, New York 10022  
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

5th day of November , 1973.

  
Joseph S. Van Ratten

  
Martha Funaro



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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
November 5, 1973

Mr. Herbert Matter  
19 MacDougal Alley  
New York, New York

Dear Mr. Matter:

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

Please take further notice that pursuant to  
Section (a) **386j** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **90 days**  
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,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

## STATE TAX COMMISSION

Herbert Matter filed an application pursuant to sections 374 and 386j of the Tax Law for revision of unincorporated business taxes under Article 16-A of the Tax Law for the years 1953, 1954, 1955 and 1956. The aforementioned application was denied. A hearing was demanded and duly held on November 12, 1964, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Solomon Sies, Hearing Officer. Herbert Matter appeared personally and was represented by Colton & Fernbach, Esqs., Franklin Weissberg, Esq., of Counsel).

ISSUE

## FINDINGS OF FACT

1. The Income Tax Bureau issued to applicant, Herbert Matter, notices of additional assessments for unincorporated business taxes for 1953, \$860.24 (#B-723226) and \$30.96 (#AB-002105); 1954, \$601.91

(#AB-002106); 1955, \$1,036.17, (\$1,408.34 less \$372.17 cancelled, #B-723228); 1956, \$41.51 (#B-723229, \$500.00 less \$458.49 cancelled) and \$646.40 (#B-791787).

2. Applicant, Herbert Matter, attended art schools in Geneva, Switzerland, and Paris, France, between 1918 and 1922. He received no degree or diploma for his studies there. After 1922, applicant attended Art & Metier Graphic, which was a studio dealing in graphic arts. In 1925, applicant returned to Switzerland and worked in the tourist office of the Swiss Government where he created posters.

3. During the years in issue, applicant, Herbert Matter, maintained a studio at 19 McDougal Alley, New York City, where he kept photographic equipment and art supplies. From his studio, applicant performed services for Conde Nast Publications. This consisted at times of designing and making the pictures for the covers of different magazines. This was described by the applicant as editorial photography.. Compensation was made to taxpayer on a piecework basis. The applicant failed to submit the written agreement between Conde Nast Publications and himself.

4. Applicant, Herbert Matter, performed services for Knoll Associates and Knoll International Ltd., during the years in question. These services consisted of aiding the design and arrangement of showrooms and displays of furniture and fabrics which applicant photographed for the aforementioned company to use in its booklets, catalogues and ads. Applicant operated from his own studio and received quarterly payments for his services.

5. Applicant, Herbert Matter, performed services during 1955 and 1956 for the New York-New Haven Railroad and during 1956 for the

Boston & Maine Railroad. For these railroads, he designed their symbol or trademark and determined where these symbols were to be placed on the engine and rolling stock. Applicant was paid on a retainer basis by these corporations. No evidence of the type of agreement applicant had with these railroads has been submitted.

6. During the years in question, applicant, Herbert Matter, left New York City to lecture at Yale University in connection with a course in graphic design. Applicant claimed to teach design, print making, and the application of photographic techniques to graphic design. The income received by applicant from his teachings at Yale University was excluded by the Income Tax Bureau in assessing him unincorporated business tax on his business activities for the years in question.

7. Applicant, Herbert Matter, was an officer and stockholder in Studio Associates, Inc., New York City, during the years in question. This corporation was engaged in advertising photography, producing pictorial representations of products handled by its customers. Applicant claims he was an employee of Studio Associates Inc. He would receive an assignment from said corporation which he would perform either in his own studio or in a studio supplied by said corporation. Applicant would receive as compensation a percentage of the fee which this corporation received from its customers. Earnings from Studio Associates Inc., constituted 24% to 60% of applicant's total earnings during the years in issue. No evidence of the agreement between applicant and Studio Associates, Inc. was submitted. Applicant has failed to show that said corporation withheld taxes for the Federal Government or paid social security for him.

CONCLUSIONS OF LAW

A. Applicant, Herbert Matter, has failed to carry his burden of proof to establish he was under such supervision and control of Studio Associates, Inc. so as to be an employee of said corporation. Applicant is therefore deemed an independent contractor in connection with the services performed by him on behalf of Studio Associates, Inc.

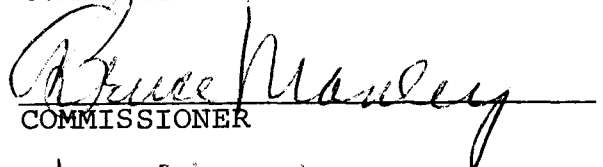
B. Applicant, Herbert Matter, has failed to carry his burden of proof to establish that his activities as a graphic designer constitute the practice of a profession exempt from unincorporated business tax pursuant to section 386 of the Tax Law. For the years 1953, 1954, 1955 and 1956, the activities of applicant performed for Conde Nast Publications, Studio Associates, Inc., Knoll International Ltd., New York-New Haven Railroad, the Boston & Maine Railroad and miscellaneous sources constituted the carrying on of an unincorporated business subject to unincorporated business tax under Article 16-A of the Tax Law.

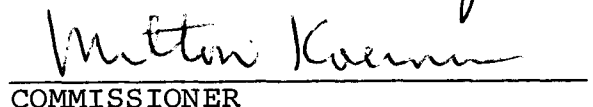
C. The application is denied and the assessments for 1953, 1954, 1955 and 1956 are due together with such further interest and additional charges, if any, as may be computed by the Income Tax Bureau under the authority of sections 376 and 377 of the Tax Law.

DATED: Albany, New York  
November 5, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER