

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT ORCHANT

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 thru 1965

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 17th day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert Orchant

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

wrapper addressed as follows: Robert Orchant
1112 Howard Drive
Westbury, New York 11590

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

17th day of August , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, 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 17, 1972

Robert Orchant
1112 Howard Drive
Westbury, New York 11590

Dear Mr. Orchant:

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

Please take further notice that pursuant to **section 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 relat-
ing 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

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT ORCHANT	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962 through 1965.	:	

Robert Orchant filed a petition under sections 722 and 689 of the Tax Law for refund of unincorporated business taxes paid on November 14, 1967, under a Statement of Audit Changes dated October 26, 1967, imposed by Article 23 of the Tax Law for the years 1962 through 1965.

A hearing was held on February 10, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City before Nigel G. Wright, Hearing Officer. The petitioner appeared personally and without a representative. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of Counsel).

ISSUE

The issue in this case is whether petitioner, a commercial artist, is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner is a commercial artist and designer. He operated out of a studio of two or three rooms at his home at 1112 Howard Avenue, Westbury, New York. This was equipped with a drawing table, cabinets, files and a supply of drawing equipment.

2. Petitioner's work is primarily the design of letterheads and the design of printed matter on boxes, bags, and other packaging material. Typically his work is done in two stages: he conceives of and draws a design on tracing paper--the "layout"--after which he makes a more permanent finished drawing--the "mechanical"--which is done with a particular reproduction process in mind.

3. Petitioner's letterheads indicates that he does advertising, packaging, brochures, catalogues, sales promotion and direct mail. However, he has never performed any mailing service and the other terms are only intended to indicate the areas of activity for which he performs his art work.

4. Petitioner attended college at Cornell, Brooklyn College and the College of the City of New York receiving a B.A. in design from Brooklyn College.

5. The refund demanded is in the amount of \$1,060.77 plus interest of \$186.11 already paid plus further interest as may be due under section 688 of the Tax Law.

CONCLUSIONS OF LAW

Petitioner has not carried the burden of proof that he is a professional within the meaning of the statute (see 20 NYCRR 281.4). A commercial artist is usually considered for purposes of this tax not to be a professional (see White v. Murphy 11 AD 2d 254).

The petition is denied. The refund is denied.

DATED: Albany, New York

August 17, 1972

STATE TAX COMMISSION

Norman Kaplan
COMMISSIONER

Bruce M. Mancy
COMMISSIONER

Milton Korman
COMMISSIONER