

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MATHILDE PINCUS

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) 1965

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

State of New York
County of Albany

Rae Zimmerman , 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 May , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon
Mathilde Pincus (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mathilde Pincus
1841 Broadway
New York, N.Y. 10023

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 May , 19 72

Heather Funnell

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon

Irving C. Harris, 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: Irving C. Harris, C.P.A.

Kastriner & Harris
19 West 44th Street
New York, N.Y. 10036
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 May , 19 72

Martha Funnell

Rae Zimmerman



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

May 3, 1972

Mathilde Pincus
1841 Broadway
New York, New York 10023

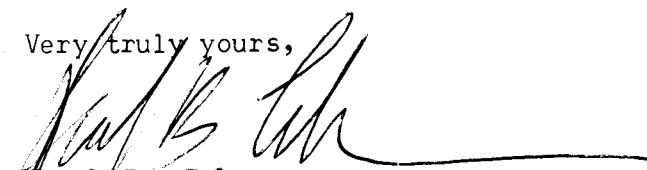
Dear Madam:

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	:	
MATHILDE PINCUS	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business tax under	:	
Article 23 of the Tax Law for the Year 1965.	:	

Petitioner, Mathilde Pincus, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1965. (File No. 32587082). 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 February 15, 1972, at 1:15 P.M. Kastriner & Harris, C.P.A.'s by Irving C. Harris, C.P.A., and Ira Selvin, Esq. appeared for petitioner. Saul Heckelman, Esq. (Alexander Weiss, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUES

I. Did petitioner, Mathilde Pincus' activities as a musical copyist during the year 1965 constitute the practice of a profession?

II. Did petitioner, Mathilde Pincus' activities as a musical copyist during the year 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Mathilde Pincus, filed a New York State income tax resident return for the year 1965. She reported on said return wages totaling \$8,158.23, and business income as a musical copyist totaling \$8,938.38. Simultaneously, she filed a New York State

unincorporated business tax return for the year 1965. She reported on said return net profit from business totaling \$8,938.38.

2. On February 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Mathilde Pincus, imposing unincorporated business tax upon her income reported as business income plus her income reported as wages, and accordingly issued a Notice of Deficiency in the sum of \$400.05.

3. Petitioner, Mathilde Pincus, contended that all of her income as a musical copyist during the year 1965 was not subject to the unincorporated business tax and that, in addition to the cancellation of the aforesaid Notice of Deficiency, she was entitled to a refund of unincorporated business tax paid by her for said year.

4. Petitioner, Mathilde Pincus was a musical copyist during the year 1965. She extracted from master musical scores, composed or orchestrated by someone else, individual parts for individual musicians. She did not create music, but merely copied it. She received her copying assignments from numerous producers of radio shows, television shows, Broadway shows and recordings. She did part of each assignment herself and subcontracted out part to other musicians. The subcontractors were paid directly by the producers. All of the musical copyists were paid on a per page basis. She received a 25% override for supervising the subcontractors. She reported directly to the arranger who was an employee of the producer.

5. Petitioner, Mathilde Pincus, was a member of Local 802 of the American Federation of Musicians. During the year 1965, the union had master labor contracts with the producers in the various fields for whom she rendered musical copying services. The payments

that she received were in accordance with the terms of the union contracts. The contracts provided that the copyists were to be "employees" and that Federal and New York State income taxes and social security tax were to be withheld from compensation paid. In practice these taxes were withheld only by approximately one half of the producers in violation of the union contract.

6. Petitioner, Mathilde Pincus, is a graduate of the Curtis Institute of Music in Philadelphia. She also studied music with private teachers. She is an accomplished viola player. She has been a musical copyist for over twenty years.

7. Petitioner, Mathilde Pincus failed to prove that more than 80% of her income was derived from personal services rendered. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Mathilde Pincus, as a musical copyist during the year 1965, 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 income received by petitioner, Mathilde Pincus, from various radio, television, recording and theatrical producers during the year 1965 constituted income from her regular business as a musical copyist 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.

C. That the aforesaid activities of petitioner, Mathilde Pincus, during the year 1965 constituted the carrying on of an unincorporated business and her income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That the petition of Mathilde Pincus is denied, the Notice of Deficiency issued February 24, 1969, is sustained, and her claim for refund is denied.

DATED: Albany, New York

May 3, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

James L. Kasper
COMMISSIONER

William H. Kline
COMMISSIONER