

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MARTY WHITE

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) 1961 through:
1965.

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 26th day of July, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon MARTY WHITE

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

wrapper addressed as follows: Mr. Marty White
24 Split Rock Lane
New Rochelle, 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

26th day of July, 1972

Paul H. Turner

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARTY WHITE

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 through
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 26th day of July , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon SIDNEY MARCUS, 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: Sidney Marcus, C.P.A.
113 W. 42 Street
New York, New York 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

26th day of July , 1972.

Martin J. Funnell

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 26, 1972

Mr. Marty White
24 Split Rock Lane
New Rochelle, New York 10804

Dear Mr. White:

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,

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	:	
MARTY WHITE	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961 through 1965.	:	

Marty White filed a petition pursuant to section 722 and 689 of the Tax Law for the redetermination of a deficiency dated October 26, 1970, for 1961, 1962 and 1963, and a deficiency dated January 18, 1971, for 1964 and 1965 each for unincorporated business taxes under Article 23 of the Tax Law.

A hearing was held on August 9, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel Wright, Hearing Officer. Petitioner was not present at the hearing but was represented by Sidney Marcus, C.P.A. The Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel).

The record of such hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner, a musician, is exempt from tax under section 703(c) of the Tax Law as a professional.

FINDINGS OF FACT

1. Petitioner describes himself, on his return, as a musician. He has an office at 6412 Metropolitan Oval, Bronx, New York, where

he employs three women. Since 1965, petitioner has operated as a corporation.

2. Petitioner's business is described as the booking and making up of bands to play at weddings and graduation exercises. He may book four or five bands in one evening. He has no permanent staff of musicians but obtains them through Local 802 of the Musicians Union. Petitioner would make an appearance at each affair and function as a master of ceremonies.

3. The deficiencies amount to \$2,347.95 with \$1,051.69 interest for a total of \$3,399.64 for 1961, 1962 and 1963 and \$2,806.27 for 1964 and 1965.

CONCLUSIONS OF LAW

While a musician and band leader may be a professional in some cases, (Voorhees v. Bates 308 N.Y. 184) petitioner has not carried the burden of proof that his activities come within the exemption (see Salter v. Murphy 11 AD 2d 262). It would appear that petitioner is a mere booking agent whose knowledge of music is not necessary to his activities (see Sundberg v. Bragalini 7 AD 2d 15).

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

July 26, 1972.

STATE TAX COMMISSION

Norman Galbraith

COMMISSIONER

Robert H. H. H.

COMMISSIONER

Milton K.

COMMISSIONER