

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT McCALL

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) 1963 through
1970.

State of New York
County of Albany

Janet Mack, 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 4th day of November , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert McCall

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

4816 Moonlight Way
Paradise Valley, Arizona 85253

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

4th day of November , 1974.

Martha S. Sarno

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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ROBERT McCALL

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a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1963 through :
1970.

State of New York
County of Albany

Janet Mack, 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 4th day of November , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Gregory McMahon, 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: Gregory McMahon, C.P.A.
60 East 42nd Street
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

4th day of November , 1974.

Franklin J. Jurek

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
November 4, 1974

Mr. Robert McCall
4816 Moonlight Way
Paradise Valley, Arizona 85253

Dear Mr. McCall:

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

Please take further notice that pursuant to
Section (x) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
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,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT McCALL	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1963 through 1970.	:	

Petitioner, Robert McCall, 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 1963 through 1970. (File Nos. 6-66211112 and 0-56901534). 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 August 15, 1973, at 10:45 A.M. Petitioner appeared by Gregory McMahon, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUES

I. Did petitioner, Robert McCall's activities as an artist during the years 1963 through 1970 constitute the practice of a profession?

II. Were the services rendered by petitioner, Robert McCall, during the years 1967 and 1968, for Metro-Goldwyn-Mayer, Inc. so integrated and interrelated with his other business activities so as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, Robert McCall, and his wife filed New York State income tax resident returns for the years 1963 through 1970. He did not file New York State unincorporated business tax returns for said years.

2. On November 29, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert McCall, imposing unincorporated business tax upon the income derived from his business activities during the years 1963 in the sum of \$671.34, 1964 in the sum of \$796.28, 1965 in the sum of \$445.03 and 1966 in the sum of \$353.75. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,934.24.

3. On November 29, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert McCall, imposing unincorporated business tax upon the income derived from his business activities during the years 1967 in the sum of \$868.20, 1968 in the sum of \$2,360.47, 1969 in the sum of \$1,607.74 and 1970 in the sum of \$913.32. It imposed unincorporated business tax upon his salary income for the years 1967 and 1968, which it held to be business related. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$6,500.18.

4. Petitioner, Robert McCall, attended the Columbus School of Fine Art in Ohio. He has specialized in Aviation and Aerospace art.

5. During the years 1963 to 1970, petitioner, Robert McCall's business income was derived from his activities as both a commercial and noncommercial artist. His artistic activities included magazine covers and illustrations, advertisements and works which were exhibited in many museums and galleries. Annexed hereto as Addendum A is a schedule setting forth the findings by the State Tax Commission as to which items of artistic work by him during the years 1963 to 1970, constituted fine art and which constituted commercial art.

6. Petitioner, Robert McCall's income from commercial and noncommercial art was as follows:

<u>Year</u>	<u>Commercial (Taxable)</u>	<u>Noncommercial</u>
1963	\$30,150.00	\$10,100.00
1964	6,200.00	34,150.00
1965	2,300.00	28,250.00
1966	10,645.00	17,040.00
1967	16,185.00	9,800.00
1968	31,985.00	28,450.00
1969	11,632.50	43,600.00
1970	1,850.00	35,750.00

7. Petitioner, Robert McCall's salary income received from Metro-Goldwyn-Mayer, Inc. in 1967 and 1968, was compensation for commercial art work, consisting of advertisements for motion pictures. He was not subject to substantial direction and control.

8. During the years 1963 to 1970, over 80% of petitioner, Robert McCall's income as an artist was derived from personal services rendered; capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That petitioner, Robert McCall's activities as a non-commercial artist during the years 1963 to 1970, constituted the practice of a profession and, therefore, the portion of his income derived from such activities as set forth in paragraph "6" was not subject to the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That petitioner, Robert McCall's activities as a commercial artist during the years 1963 to 1970, although requiring special knowledge and experience did not constitute the practice of a profession and, therefore, the portion of his income derived from such activities as set forth in paragraph "6" was subject to the

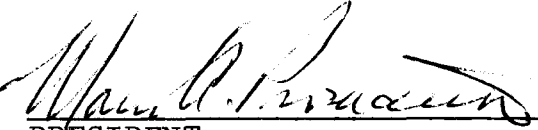
unincorporated business tax in accordance with the meaning and intent of sections 703 and 703(c) of the Tax Law.

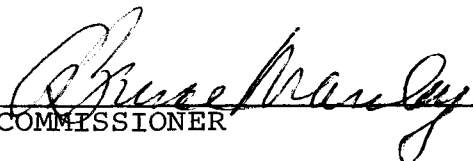
C. That the services rendered by petitioner, Robert McCall, during the years 1967 and 1968, for Metro-Goldwyn-Mayer, Inc., were so integrated and interrelated with the activities of his unincorporated business as a commercial artist so as to constitute part of a business regularly carried on by him and, therefore, the salary received by him from said firm was not exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of sections 703 and 703(b) of the Tax Law.

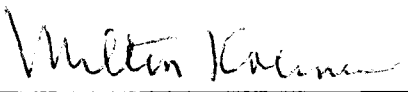
D. That the petition of Robert McCall is granted to the extent of reducing unincorporated business tax due for the year 1963 from \$671.34 to \$442.00; for the year 1964 from \$796.28 to \$0.00; for the year 1965 from \$445.03 to \$0.00; for the year 1966 from \$353.75 to \$0.00; for the year 1967 from \$868.20 to \$580.51; for the year 1968 from \$2,360.47 to \$1,217.34; for the year 1969 from \$1,607.74 to \$0.00; and for the year 1970 from \$913.32 to \$0.00; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued November 29, 1971; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER