

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
WILL PARKER and NANCY PARKER
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article ~~(2)~~ 23 of the
Tax Law for the Year ~~(3)~~ 1962 :

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

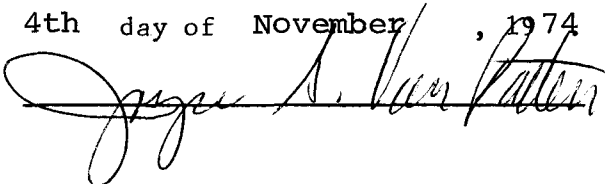
State of New York
County of Albany

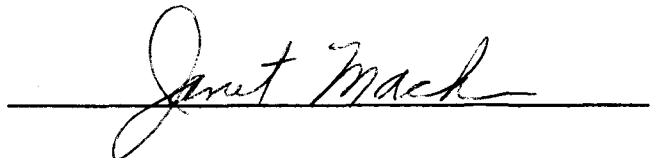
Janet Mack, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of November, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Will Parker and
Nancy Parker ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Will Parker
Hidden Spring Lane
Rye, 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)~~
~~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





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILL PARKER and NANCY PARKER

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article ~~(3)~~ 23 of the
Tax Law for the Year ~~(6)~~ 1962

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

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 Alexander J.D.
Greeley, Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Alexander J. D. Greeley, Esq.

Greeley & McKay, C.P.A.'S
122 East 42nd Street

New York, New York 10017
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

James S. Van Patten

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. & Mrs. Will Parker
Hidden Spring Lane
Rye, New York

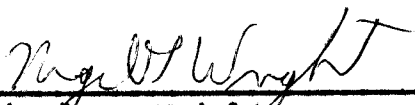
Dear Mr. & Mrs. Parker:

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

Please take further notice that pursuant to
Section (a) **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,


Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILL PARKER and NANCY PARKER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1962.	:	

Will Parker and Nancy Parker filed a petition pursuant to sections 722 and 689 of the Tax Law for redetermination of deficiency for unincorporated business taxes under Article 23 of the Tax Law for the year 1962.

A hearing was held on August 16, 1967, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Evelyn King, Hearing Officer. Petitioner was not present at the hearing but was represented by Alexander J.D. Greeley, Esq.

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

ISSUE

The issue is whether the income of petitioner, Will Parker, which was reported as salary, from a corporation was so integrated with his business income as to constitute additional business income subject to unincorporated business tax in accordance with the provisions of section 703(b) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Will Parker, filed an unincorporated business tax return for the year 1962 under the name of Film Counselors. The amount shown to be due on this return was paid.

2. The petitioners, Will Parker and Nancy Parker, included in their personal income tax return for 1962, salary received from Film Counselors, Inc. Petitioners were issued a Notice of Deficiency, File No. 2-8107347, dated January 4, 1965, for the year 1962 by the Income Tax Bureau. The deficiency reflected an audit change by the Income Tax Bureau, who included salary received from Film Counselors, Inc. by petitioner Will Parker (but not Nancy Parker), as additional business income subject to additional unincorporated business tax amounting to \$1,140.01, plus interest.

3. Film Counselors, Inc. is a firm which manufactures motion pictures for industry. These are generally promotional type films. This firm is located at 500 Fifth Avenue, New York City, and is incorporated under the laws of New York State. There were five to ten permanent employees of this corporation and during film production, there were as many as 50 to 100 employees. Petitioner, Will Parker, was the administrative and executive head and sole owner of Film Counselors, Inc. Petitioner had an oral contract with this corporation to act as president and to be in charge of producing these films. He was required to spend 90% of his working time for the corporation.

4. A franchise tax return was filed for Film Counselors, Inc., for fiscal year ending March 31, 1963. The salary received by petitioners from said corporation, which was reported on their 1962 tax return, was also used in determining the alternative tax paid by this corporation to New York State.

5. Petitioner, Will Parker, is also engaged in an unincorporated business under the name of Film Counselors, which is a sole proprietorship. Film Counselors would act as a sales agent for film distributing companies. It would appear that the clients of Film Counselors, Inc., i.e. those who had ordered the films made by said corporation and who now owned these films, would seek the help of Film Counselors to obtain a distributor for the films. During 1962, of the 23 films handled by Film Counselors, only 3 had not been produced by Film Counselors, Inc. The distributor would see that the films were shown in schools, foundations and so forth. The former clients of Film Counselors, Inc. would contact with the distributing companies. The distributors would pay Film Counselors a commission as its sales agent or representative. The commissions received by Film Counselors from these distributors were paid pursuant to previous contractual agreements. Examples of such agreements between the distributors and Film Counselors have been submitted.

6. Film Counselors, Inc. and Film Counselors were both located at 500 Fifth Avenue, New York City. Film Counselors had no employees and paid no rent to Film Counselors, Inc. These two organizations had separate bookkeepers during 1962.

7. The petitioner, Will Parker, spent from 75% to 90% of his time engaged in his duties as president of Film Counselors, Inc. and the remainder engaged in the business of the proprietorship. The corporation, per se, exercised no realistically substantial direction and control over the petitioner, Will Parker, who was sole stockholder and president of the corporation.

CONCLUSIONS OF LAW

A. The activity of the petitioner, Will Parker, as president of Film Counselors, Inc., is so interrelated and integrated with the activity of Film Counselors as to subject the income received from the corporation to the unincorporated business tax pursuant to section 703(b) of the Tax Law.

B. The petitioner, Nancy Parker, is not an owner or partner of Film Counselors and cannot be held liable for unincorporated business tax owed by it. (Her salary from Film Counselors, Inc. was not included in the computation of the deficiency.)

DECISION

As to the petitioner, Nancy Parker, the petition is granted and the Notice of Deficiency for 1962 is cancelled. As to the petitioner, Will Parker, the petition is denied and the Notice

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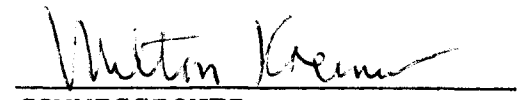
of Deficiency is sustained. Statutory interest shall be added to the deficiency.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER