

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN L. HART

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)~~ 1965. :

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 16th day of December , 1975 , she served the within
Notice of Decision ~~for Redetermination~~ by (certified) mail upon John L. Hart,

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

Mr. John L. Hart
609 Bassett Avenue
Endicott, 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)~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(Representative of)~~ petitioner.

Sworn to before me this

16th day of December , 1975.

Mary Left

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN L. HART

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 ~~(a)~~ 23 of the
Tax Law for the Year ~~(a)~~ 1965. :

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 16th day of December , 1975 , she served the within
Notice of Decision ~~(for Determination)~~ by (certified) mail upon Joseph L. Nestor, Esq.

, (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph L. Nestor, Esq.
Nestor, Nestor, Totolis & Shamulka
14 Washington Avenue
Endicott, New York 13760
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

16th day of December , 1975.

Mary Giff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) ~~457-3850~~
457-3850

DATED: Albany, New York
December 16, 1975

Mr. John L. Hart
609 Bassett Avenue
Endicott, New York

Dear Mr. Hart:

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

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

L. Robert Leisner

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	:	
JOHN L. HART	:	
for Redetermination of a Deficiency	:	DECISION
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the Year 1965.	:	

Petitioner, John L. Hart, 609 Bassett Avenue, Endicott, New York petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the year 1965.

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 14, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Nestor, Nestor, Totolis & Shamulka, appearing by Joseph L. Nestor, Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq. of counsel.

ISSUE

The issue in this case is whether income derived from the production of cartoon art work, under a commercial advertising

contract, is taxable as unincorporated business income under Article 23 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, John L. Hart, timely filed a New York State income tax return for the year 1965. He filed no unincorporated business tax return for the said year.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the year 1965 was issued on May 26, 1969, against the taxpayer under File No. 46023517.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. Petitioner, John L. Hart, has for the last twenty-one years, engaged in the profession of creative entertainment and commentary embraced by the terminology commonly characterized as that of cartooning. He is the creator and owner of two prominent cartoon strips. National recognition of his professional standing developed with the publication, on a nationally syndicated basis, of his comic strip "B.C." in 1958, which strip sought to transmit humor and reflective commentary through the interrelationships among a prehistorically situated group of cave people. Continued success followed with the appearance of petitioner's comic strip "Wizard of Id", also on a nationally syndicated basis, in November of 1964.

5. As a result of the national acceptance and prominence of "B.C.", petitioner was approached by the Dr. Pepper Company of Dallas, Texas in 1961. Dr. Pepper Company produced syrup and concentrate for production of non-alcoholic carbonated beverages and was interested in the creation of caveman characters and affiliated prehistoric representations for the purpose of developing easily identifiable symbols which would assist it in marketing its products. A contract was executed between Dr. Pepper Company and petitioner in September of 1961, and petitioner agreed to create caveman characters and prehistoric representations which would be original, novel and acceptable for copyright by Dr. Pepper Company, but would not infringe on the rights of the New York Herald Tribune Syndicate, which held the license from petitioner to use the "B.C." comic strip and characters therefrom.

6. The 1961 contract provided options for renewal to Dr. Pepper Company, and one such renewal was exercised in 1964, whereupon a new commercial cartooning contract was drafted and executed in July, 1964. This contract covered taxable year 1965 in terms of fees received by petitioner. By the terms of this contract, petitioner was to receive fees for his services as an artist to

be rendered in the continued creation of the caveman characters, and for his creation of comic strips for use in various forms of commercial advertising media.

7. Petitioner contends that cartoon art work produced under said commercial advertising contract is exempt from unincorporated business tax, since such work is of the same character as cartoon art done by petitioner in his professional capacity.

8. Petitioner further contends that to levy unincorporated business tax on income derived from the cartoon art work in question would not be within the spirit of section 703 of the Tax Law, since the unincorporated business income tax was put into law to equalize the tax consequences between those people carrying on a business individually or in some other entity other than corporate and the business conducted through a corporation, and under 26 U.S.C. sec. 541 et. seq., he is effectively prohibited from incorporating. Petitioner further states that under 26 U.S.C. sec. 541 et. seq., if incorporated he would be subject to personal holding company income consequences. Under the United States Tax Law, the penalties that the petitioner would incur by incorporating would be both substantial and so prohibitive that even though there appears to be no corresponding penalties in terms of high tax rates in New

York, the petitioner is, effectively and practically speaking, barred from incorporating with any tax consequences that would be rational and reasonable.

CONCLUSIONS OF LAW

A. Petitioner's income derived from the production of cartoon art work, under a commercial advertising contract with the Dr. Pepper Company, is taxable as unincorporated business income under Article 23 of the Tax Law which makes no allowance for personal holding company legislation. The Tax Commission recognizes the petitioner's status as a professional artist; however, activity which consists of executing drawings or illustrations for commercial advertising purposes is not a professional activity since it deals with the conduct of business itself. Tax Law sec. 703(c), Reg. sec. 203.11(b)(1).

B. The petition is denied and the determination of the deficiency in unincorporated business tax is sustained.

DATED: Albany, New York
December 16, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER