

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KAREN WEINTRAUB

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(s) 1967, 1968, 1969.

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 20th day of March , 1975, she served the within
Notice of Decision (~~by certified mail~~) by (certified) mail upon Karen Weintraub

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

7 West 81st Street
New York, New York 10024

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

20th day of March , 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KAREN WEINTRAUB

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 ~~(x)~~ 23 of the
Tax Law for the Year(s) 1967, 1968, 1969.

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 20th day of March, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon Alan Prigal, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Alan Prigal, Esq.

36 West 44th 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

20th day of March, 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

~~Saul Beckelmann, Acting President~~
~~XXXXXXXXXXXXXXXXXXXX~~

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
March 20, 1975

Mrs. Karen Weintraub
7 West 81st Street
New York, New York 10024

Dear Mrs. Weintraub:

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

Please take further notice that pursuant to
Section (5) **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	:	
KAREN WEINTRAUB	:	DECISION
for a Redetermination of a Deficiency	:	
or for refund of Unincorporated	:	
Business Tax under Article 23 of the	:	
Tax Law for the Years 1967, 1968 and	:	
1969.	:	

Karen Weintraub, 7 West 81st Street, New York, New York 10024, filed a petition under sections 689 and 722 of the Tax Law for the redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1967, 1968 and 1969.

Said deficiency was asserted by notice issued September 25, 1972, under file number 9-38758822. It included a deficiency for personal income tax which is not here in issue. The deficiency for unincorporated business tax, here in issue, amounts to \$5,872.50 plus interest.

A hearing was duly held on January 15, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer.

It is a mail-order house selling direct to institutions or to other distributors. It has no salesmen. Prior to the years here in question, it produced no filmstrips of its own.

Its payroll includes about 20 people. These people worked primarily in packing, shipping, receiving, packing billing and clerical work.

The business was started about 1957 by Mr. Weintraub, apparently while he was still in college and unmarried. Since marriage, Mrs. Weintraub has worked to some extent in designing catalogues and promotional material. About 86% of its stock is owned by Mr. Robert Weintraub and 14% by Mrs. Karen Weintraub. Mrs. Weintraub does not hold an office.

3. Beginning in the years here in question, Educational Record Labs, Inc. began to get into the business of producing its own filmstrips. Mr. Weintraub had filmstrips on hand from other producers which he thought were good in concept but which showed each frame too long a time to keep the interest of children and which had titles for each frame which, while suitable to the frame, did not relate the frame to other frames or to the story as a whole. Mrs. Weintraub found that she could correct these deficiencies with the aid of freelance writers and artists whom she knew living in her own neighborhood of the West Side of New York City.

4. For a typical filmstrip, Mr. Robert Weintraub selects the title and gives some general direction and comment as to what is desired. Mrs. Weintraub determines the prospective costs and discusses them with Mr. Weintraub who has final authority on the budget. Typical costs were \$1,500 a filmstrip. Mrs. Weintraub selects and hires on behalf of Educational the script writer, artist, film studio and other personnel necessary to make the strip. These persons were paid on a piecework basis and directly by corporate check. In a typical year, about fifteen such freelancers might be so retained. It would be on the initiative of Mrs. Weintraub that any of them would be dismissed. The final product was reviewed by both Mr. and Mrs. Weintraub. Mr. Weintraub had final authority to accept or reject the strip.

5. Mrs. Weintraub was paid \$1,000 for each filmstrip completed. This is comparable with the fees of other people who produce similar work. She produced 135 strips during the years here in question. She had no set hours but would work as long as necessary on each strip. She would be working on up to fifteen strips at any one time. She worked at her home but with a small amount of equipment furnished by the company. Mrs. Weintraub has never been involved in the preparation of filmstrips for anyone except Educational. She does not hold herself out for hire by anyone else.

6. Mr. Weintraub was responsible for choosing the subject of a filmstrip, setting its budget and approving the final product.

7. The amounts paid to Mrs. Weintraub and to the freelancers were not subject to withholding for income or social security taxes. After the years in question, withholding for taxes and social security has been commenced with respect to Mrs. Weintraub though apparently not for the other freelancers.

CONCLUSIONS OF LAW


Educational Film Strips Inc. did not retain the legal right to direct and control the details of the manner and means by which Mrs. Weintraub was to perform her duties. She was an independent contractor and is subject to unincorporated business tax.

DATED: Albany, New York
March 20, 1975

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER