

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN T. CLAIBORNE, JR.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (9) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966 and 1967.

State of New York
County of County

Carmen Mottolese, 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 27th day of September, 1976, she served the within Notice of Decision by (certified) mail upon John T. Claiborne, Jr. (~~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 T. Claiborne, Jr.
12 Park Avenue Terrace
Bronxville, New York 10708

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ 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

27th day of September, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 27, 1976

TELEPHONE: (518) **457-3850**

Mr. John T. Claiborne, Jr.
12 Park Avenue Terrace
Bronxville, New York 10708

Dear Mr. Claiborne:

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

Please take further notice that pursuant to
Section ~~680~~ **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN T. CLAIBORNE, JR. :
for a Redetermination of a Deficiency or : DECISION
for Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law for :
the Years 1966 and 1967. :
:

Petitioner, John T. Claiborne, Jr., 12 Park Avenue Terrace, Bronxville, New York, 10708, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for 1966 and 1967. (File No. 7-74874404). A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 7, 1976, at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq., of counsel).

ISSUES

I. Did the activities of the petitioner, John T. Claiborne, Jr., as a Financial Consultant during the years 1966 and 1967 constitute the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law?

(2)

II. Was all of the income received by the petitioner, John T. Claiborne, Jr., during the years in question allocable to New York State for purposes of the New York State unincorporated business tax?

III. Was penalty properly imposed under section 685(a) of the Tax Law for failure to file New York State unincorporated business tax returns for the years 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, John T. Claiborne, Jr., timely filed resident New York State income tax returns for the tax years 1966 and 1967. He did not file New York State unincorporated business tax returns for 1966 and 1967.

2. On April 12, 1971, Income Tax Bureau issued a Statement of Audit Changes against the petitioner imposing an unincorporated business tax upon the petitioner's net business income for said years upon the grounds that his activities as a financial consultant constituted the carrying on of an unincorporated business. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$1,290.88 plus interest thereon and penalty under section 685(a) of the Tax Law.

3. Petitioner, John T. Claiborne, Jr., testified that he was a Financial Consultant and that during the years in question he did work for at least three separate companies. He also stated

(3)

that he was not constrained from working for other companies. None of the companies for which petitioner provided his services subjected his remuneration to withholding tax or any other deductions consistent with employee relationships.

4. During the period under review, petitioner, did not maintain an office anywhere except within New York State although, as he testified, office space and stenographic services were made available to him at the firms with which he did business. He paid no rent for any office space outside New York State.

5. At no time was petitioner subject to any supervision as to his employment or allocation of time.

CONCLUSIONS OF LAW

A. That the activities of the petitioner, John T. Claiborne, Jr., as a Financial Consultant in the years 1966 and 1967 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and his income from such activities is thereby subject to unincorporated business tax for such years.

B. That all of the petitioner's income from his activities as a financial consultant during the years 1966 and 1967 is allocable to New York State for purposes of the New York State unincorporated business tax in accordance with the meaning and intent of section 707(a) of the Tax Law as the petitioner did not maintain an office anywhere except within New York State.

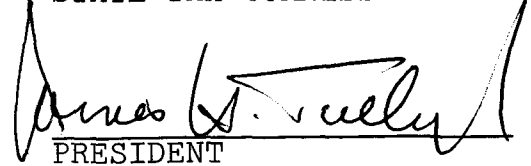
(4)

C. That penalties were properly imposed under section 685(a) of the Tax Law for the years 1966 and 1967 in that the petitioner, John T. Claiborne, Jr., failed to show reasonable cause for failure to file such returns.

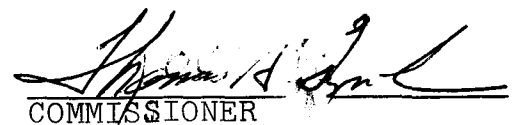
D. That the petition of John T. Claiborne, Jr. is denied and the Notice of Deficiency issued April 12, 1971, is sustained.

DATED: Albany, New York
September 27, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER