

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BEN GERBANO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (x) 23 of the :
Tax Law for the Year(s) ~~xxx~~ Period(s) :
1970 and 1971.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of December, 1976, he served the within
Notice of Decision by (certified) mail upon Ben Gerbano
, ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ben Gerbano
140 Asharoken Avenue
Northport, New York 11768
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)~~
~~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

14th day of December, 1976

Bruce Batchelor

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

December 14, 1976

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

Mr. Ben Gerbano
140 Asharoken Avenue
Northport, New York 11768

Dear Mr. Gerbano:

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.

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

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	:	
BEN GERBANO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1970 and 1971.	:	

Petitioner, Ben Gerbano, residing at 140 Asharoken Avenue, Northport, New York 11768, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1970 and 1971. (File No. 1-84810071).

A small claims hearing was held August 19, 1976, at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUES

I. Did petitioner, Ben Gerbano's activities as an interior designer and consultant during the years 1970 and 1971 constitute the practice of a profession; was the income received therefrom exempt from unincorporated business tax?

II. May accrued interest be waived because of the Income Tax Bureau's failure to proceed promptly?

FINDINGS OF FACT

1. Petitioner, Ben Gerbano, filed personal income tax returns for 1970 and 1971. He identified his occupation as "interior decorator" and reported his earnings as business income. He did not file unincorporated business tax returns. The Income Tax Bureau held that petitioner, Ben Gerbano, was self-employed and that his business income was subject to unincorporated business tax. A Notice of Deficiency dated November 24, 1975 was issued for 1970 and 1971 in the amount of \$362.06 unincorporated business tax plus \$161.66 penalty and \$79.42 interest for a total due of \$603.14.

2. Petitioner, Ben Gerbano, is an interior designer. An interior designer's work begins with the bare structural beams in the interior of a building. He creates and designs an entire room including walls, ceiling, lighting, floors, wall covering, furniture, rugs, drapes, etc. This is done in consultation with the trades people involved. Petitioner, Ben Gerbano, also offers consulting services to other interior designers.

3. Petitioner, Ben Gerbano, attended the Brooklyn School of Interior Design. He never graduated college. He has twenty-five years experience in his field. Petitioner, Ben Gerbano, belongs to the National Society of Interior Designers. He has his own letterhead which identifies him as an interior designer and consultant. There are no required qualifications for this work. There is no license required in order to practice this occupation.

4. Petitioner contends that the length of time involved from audit to hearing, results from the failure of the Income Tax Bureau

to proceed promptly. Therefore, the accrued interest should be waived.

CONCLUSIONS OF LAW

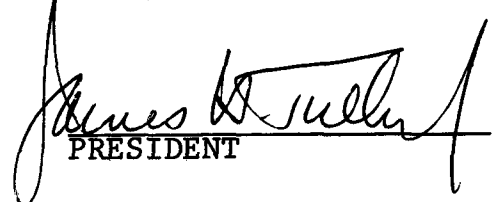
A. That the activities of petitioner, Ben Gerbano, as an interior designer and consultant during the years 1970 and 1971, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

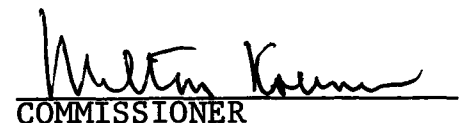
B. That petitioner, Ben Gerbano, may have found relief from the accrual of interest under section 684(i) of the Tax Law by paying the proposed deficiency and then petitioning for refund. There is no provision in the Tax Law permitting the waiving of interest.

C. That the petition of Ben Gerbano is denied and the Notice of Deficiency dated November 24, 1975 is sustained.

DATED: Albany, New York
December 14, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER