

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE GROPPER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~xxxPeriod(s)~~ :
1970, 1971 and 1972.

State of New York
County of Albany

Catherine Steele, 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 10th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Lawrence Gropper

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Lawrence Gropper
16 Lori Street
Poughkeepsie, New York 12601

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)~~
~~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

10th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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Taxes under Article(x) 23 of the :
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1970, 1971 and 1972.

State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Sheldon J. Teitelbaum, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

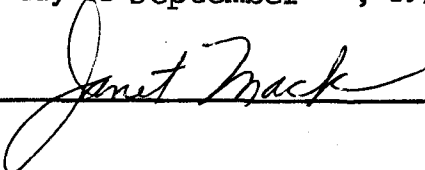
as follows: Sheldon J. Teitelbaum, CPA
80 Washington Street
Poughkeepsie, New York 12601

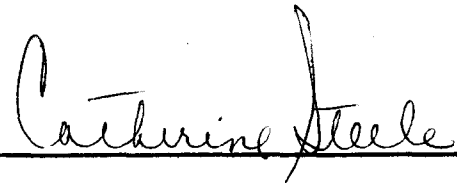
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the United States Postal Service within the State of New York.

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

10th day of September, 1976.







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 10, 1976

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

Mr. Lawrence Gropper
16 Lori Street
Poughkeepsie, New York 12601

Dear Mr. Gropper:

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

Please take further notice that pursuant to
Section ~~20~~ **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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LAWRENCE GROPPER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1970, 1971 and 1972.	:	
	:	

Petitioner, Lawrence Gropper, residing at 16 Lori Street, Poughkeepsie, New York, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970, 1971 and 1972. (File No. 2-22212857). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the office of the State Tax Commission, Building #9, State Campus, Albany, New York on November 7, 1974 at 10:00 a.m. Petitioner appeared by Sheldon J. Teitelbaum, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

ISSUE

Were the services rendered by petitioner, Lawrence Gropper, during the years 1970, 1971 and 1972, as an officer of Cross Road Press, Inc. so interrelated and integrated with his activities in connection with his unincorporated business as a printer as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, Lawrence Gropper, purchased a sole proprietorship in April of 1963, known as Marr Printing, and was conducting such sole proprietorship in the years 1970, 1971 and 1972.

2. Petitioner, Lawrence Gropper, acquired the stock of Cross Road Press, Inc. in 1966, and was an officer and employee of the corporation in 1970, 1971 and 1972 and received a salary from Cross Road Press, Inc. Withholding tax and all other proper items were deducted.

3. Petitioner, Lawrence Gropper, filed New York State unincorporated business tax returns for 1970, showing a taxable income of \$23,811.00, for 1971, showing a taxable income of \$13,806.00 and for 1972, showing a taxable income of \$15,401.00. He did not include in his net income the salary he received from Cross Road Press, Inc.

4. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Lawrence Gropper, imposing unincorporated business tax upon the salary received by him from Cross Road Press, Inc. during the years 1970, 1971 and 1972. It also imposed additional personal income tax for the years 1970, 1971 and 1972 for unreported rental income in the total amount of \$4,526.00, which item is not being contested by him. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$4,910.43 which included the tax on the omitted rental income.

5. During the years 1970, 1971 and 1972, the sole proprietorship, Marr Printing, owned equipment that was used in its business of printing letterheads and business cards and reproduction work substantially for IBM. Marr Printing was an approved vendor for IBM and had been so several years before the sole proprietorship was purchased by the petitioner. The sole proprietorship had an offset press that could do a limited print up to ten by fifteen inches.

6. During the years 1970, 1971 and 1972, Cross Road Press, Inc. owned equipment that could do four-color process work such as a four color newspaper or a four color magazine and print twenty three by thirty inches. Cross Road Press, Inc. printed triple S blue stamps. The machinery was owned by Cross Road Press, Inc. prior to the petitioner's purchase of the stock of Cross Road Press, Inc. and was used to print the triple S blue stamps.

7. During the years in issue, Marr Printing and Cross Road Press, Inc. maintained separate bank accounts. Each company had its own set of books and records, did its own billing, and collected its own money. Marr Printing did not co-mingle any of its own funds with funds of Cross Road Press, Inc. Cross Road Press, Inc. billed Marr Printing for work performed for it and Marr Printing charged Cross Road Press, Inc. for use of Marr Printing's equipment. They had the same telephone number but separate listings.

8. During the years in issue, Marr Printing and Cross Road Press, Inc. occupied the same building which was owned by Cross Road Press, Inc. Petitioner owned the land on which the building was situated. Cross Road Press, Inc. had a net lease from petitioner and leased space to Marr Printing.

9. During the years in issue, petitioner spent thirty percent of his time for Marr Printing in a sales capacity and seventy percent of his time as a purchasing agent for Cross Road Press, Inc. He received wages of approximately \$25,000.00 annually in 1970, 1971 and 1972 and he reflected this income as wages in his New York State income tax returns.

10. During the years in issue, the IBM work obtained by Marr Printing was sub-contracted out to Cross Road Press, Inc. Marr Printing had no employees, while Cross Road Press, Inc. had twenty to twenty-five. Employees of Cross Road Press, Inc. did the bookkeeping work for Marr Printing. Petitioner's wife was an officer of Cross Road Press, Inc. and received a salary from the corporation. She was not employed by the sole proprietorship, Marr Printing.

11. During the years in issue, Marr Printing did not pay rent to Cross Road Press, Inc. Petitioner accepted a reduction in commission in lieu thereof and similarly the rental and maintenance of machinery.

12. During the years in issue, petitioner, Lawrence Gropper, solicited business for Marr Printing and not for Cross Road Press, Inc.

13. During the years in issue, the IBM orders were subcontracted by Marr Printing to Cross Road Press, Inc. who billed Marr Printing for approximately 95% of the rate of the price of the job. Marr Printing billed IBM for the full price. Cross Road Press, Inc.'s employees did the work for Marr Printing but each had its own customers and procured its own business.

CONCLUSIONS OF LAW

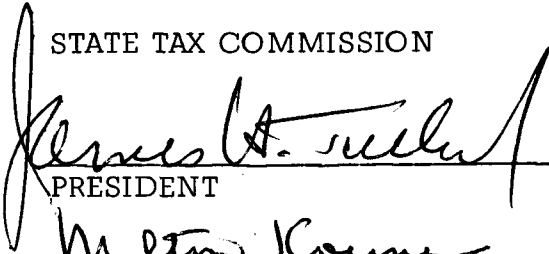
A. That the services rendered by petitioner, Lawrence Gropper, during the years 1970, 1971 and 1972, as an officer and employee of Cross Road Press, Inc., were not so interrelated and integrated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him and, therefore, the salary received by him as an officer and employee of said corporation was exempt from the unincorporated business tax in accordance with the meaning and intent of section 703 (b) of the Tax Law.

B. That the aforesaid activities of petitioner, Lawrence Gropper, as an officer and employee of Cross Road Press, Inc., during the years 1970, 1971 and 1972, did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Lawrence Gropper is granted to the extent of reducing additional unincorporated business tax due for the year 1970 from \$1,432.26 to \$60.01, for the year 1971 from \$1,465.09 to \$76.34 and for the year 1972 from \$1,471.20 to \$96.20 together with such interest as may be lawfully due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued April 12, 1974; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER