

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN I. BLACK

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) or (s) or (s)~~ :
1971

State of New York
County of Albany

Marsina Donnini, 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 22 day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Norman I. Black

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Norman I. Black
155 Stratton Road
New Rochelle, New York 10804

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

22 day of July, 1977.

Marsina Donnini

Janet Meech

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN I. BLACK

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 (~~1970 or 1971~~) :
1971

State of New York
County of Albany

Marsina Donnini, 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 22 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Sidney Weiss, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Sidney Weiss, CPA
61 Broadway,
New York, 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 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

22 day of July, 1977.

Marsina Donnini

Janet Black



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

July 22, 1977

Mr. Norman I. Black
155 Stratton Road
New Rochelle, New York 10804

Dear Mr. Black:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NORMAN I. BLACK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1971.	:	

Petitioner, Norman I. Black, residing at 155 Stratton Road, New Rochelle, New York 10804, 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 year 1971.

(File No. 10986).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 19, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Sidney Weiss, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUES

I. Whether the income received by the petitioner, Norman I. Black, from his activities of commercial advertising was subject to unincorporated business tax.

II. Whether petitioner, Norman I. Black, had reasonable cause for failing to file a New York State unincorporated business tax return for 1971.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Income Tax Bureau issued a Notice of Deficiency on April 11, 1975 imposing unincorporated business tax against the petitioner on the income from all his activities of commercial advertising. The Income Tax Bureau also assessed penalties for failure to file and pay unincorporated business tax pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law.

2. During the year 1971, the petitioner, Norman I. Black, was employed on a salary basis by William Esty Company as an "Art Director" from which he received \$28,230.00. He also received commission income in the sum of \$29,600.25 from Aspirin Incorporated as an "Account Representative and Art Director." In addition he received income from Bill Zdenak in the sum of \$1,500.00.

3. Petitioner's duties as an art director at William Esty Company, Incorporated included the responsibility for the creation of advertising and the execution of that advertising. The creation involved making layouts, and designing ads. The execution involved selecting typography, photography and assembling all these elements. The aforesaid firm withheld Federal and state income taxes and social security taxes from the salary paid to the petitioner. He

was covered under the firm's pension plan. He was also reimbursed for any expenses used in producing ads for the firm.

4. Petitioner's duties as an account representative and art director for Aspirin Incorporated included being directly responsible for new business referrals and also available for consultation regarding the creation direction for those accounts referred by him as well as house accounts. Said firm did not withhold Federal and state income taxes and social security taxes from the commission income paid to the petitioner. He did not have an employment contract with the firm.

5. The petitioner maintained that the \$29,600.25 received from Aspirin Incorporated included \$24,350.25 which was paid to him as a commission for referral of business and \$5,250.00 as payment for work actually performed by him. The petitioner also received \$1,500.00 in referral fees from Bill Zdenak. He further stated that as an employee of William Esty Company, Incorporated, he was in a position to refer customers to Aspirin Incorporated. The petitioner reported the income received from and the expenses related to Aspirin Incorporated and Bill Zdenak on "Schedule C" of his Federal income tax return for the year 1971.

6. Petitioner, Norman I. Black, was advised by his accountant that he was not required to file a New York State unincorporated business tax return for the year 1971.

7. That the income received by the petitioner, Norman I. Black, during the year 1971, from Aspirin Incorporated and Bill Zdenak, constituted receipts from his regular business of commercial advertising.

8. That the aforesaid activity of the petitioner constituted the carrying on of an unincorporated business and his income derived therefrom is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

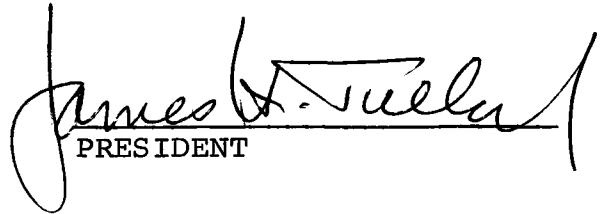
9. That the income received by the petitioner during the year 1971, as an art director with William Esty Company, Incorporated was so integrated and interrelated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him and therefore, the salary received by him for said year from William Esty Company, Incorporated, is also subject to the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

10. That the petitioner had reasonable cause for failing to file a New York State unincorporated business tax return for the year 1971 and; therefore, the penalties assessed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1971 are waived.

11. That the petition of Norman I. Black is granted to the extent of cancelling the penalties assessed in the sum \$918.69 for the year 1971; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued on April 11, 1975; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER