

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALICE BLAINE

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)~~ :
1968, 1969 and 1970

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 Alice Blaine
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mrs. Alice Blaine
80 West 40th Street
New York, New York 10018
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~~
~~xxxthe~~ 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 Trach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALICE BLAINE

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 Period(s)~~ :
1968, 1969 and 1970

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 Morris Breuda, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Morris Breuda, CPA
450 Seventh Avenue
New York, New York 10001
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 Mack



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

**Mrs. Alice Blaine
80 West 40th Street
New York, New York 10018**

Dear Mrs. Blaine:

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	:	
	:	
ALICE BLAINE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

Petitioner, Alice Blaine, residing at 80 West 40th Street, New York, New York 10018, 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 1968, 1969 and 1970 (File No. 00158).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on March 10, 1977 at 10:45 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Morris Breuda, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the income received by the petitioner, Alice Blaine, during the years 1968, 1969 and 1970, from her activities as a

fashion designer is subject to the unincorporated business tax, or is she an employee exempt from the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Alice Blaine, was employed as a fashion designer of women's clothes, on a salary basis, for Benson and Partners Limited, a division of C.M.I. Clothesmakers Limited, from January 1, 1968 to the latter part of 1969. In the latter part of 1969, she terminated her employment with said firm and became employed on a salary basis by Environment One Clothes Incorporated. She also received income from another firm during the year 1968 as a fashion designer which, she states, was for services performed after normal working hours.

2. On February 24, 1970, the petitioner, Alice Blaine, terminated her employment with Environment One Clothes Incorporated and commenced working for Manhattan Industries on a salary basis. On August 24, 1970, she terminated her employment with said firm and became employed by Helen Whiting Incorporated on a salary basis for the remainder of the year 1970.

3. Petitioner, Alice Blaine, was not employed by any of the aforesaid firms simultaneously. She was not reimbursed for any expenses during said years. She reported the income and

expenses for the years 1968, 1969 and 1970 on a Federal schedule "C". She was covered under workmen's compensation and unemployment insurance and medical plans while employed by the aforesaid firms.

4. During the years 1968, 1969 and 1970, the aforesaid firms withheld Federal and New York State withholding taxes and social security taxes, with the exception of the salary received from Benson and Partners Limited during the year 1969. However, petitioner maintained that she requested the said firm not to withhold taxes on the advice of her accountant.

5. Petitioner during said years was supplied with office space, and was instructed as to the hours she was to work by the said firms.

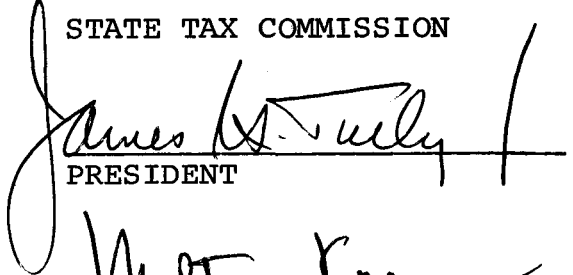
6. That the income received by petitioner, Alice Blaine, during the years 1968, 1969 and 1970 from the aforesaid firms constituted compensation as an employee exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

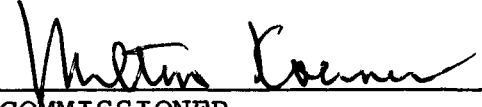
7. That the aforesaid activities of the petitioner, Alice Blaine, during the years 1968, 1969 and 1970, did not constitute the carrying on of an unincorporated business and her income derived therefrom is not subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

8. That the petition of Alice Blaine is granted and the Notice of Deficiency in the sum of \$1,676.95 issued May 21, 1973 is cancelled.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER