

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING BOGEN

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) ~~xxxxxxxxxx~~
1968, 1969, 1970 and 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 August, 19 77 she served the within Notice of Decision by (certified) mail upon Irving Bogen

~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Mr. Irving Bogen
315 Riverside Drive
New York, New York 10025

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)~~ ~~xxxxxx~~ 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 August, 19 77

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

August 22, 1977

**Mr. Irving Bogen
315 Riverside Drive
New York, New York 10025**

Dear Mr. Bogen:

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 **(a) 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 Chyrywat
Hearing Examiner**

cc: ~~Petitioner's Representative~~
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
IRVING BOGEN : 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, 1970 and 1971. :

Petitioner, Irving Bogen, residing at 315 Riverside Drive, New York, New York 10025, 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, 1970 and 1971 (File Nos. 10993 and 10994).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on September 15, 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 pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Whether the income from the petitioner's activities as a graphic designer is subject to the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Irving Bogen, is a graphic designer who is normally retained by industrial design firms, advertising agencies and publishers.

2. The petitioner is usually retained for the designing of lettering that is used for advertisements, trademarks, packaging and book jackets, which are used by his clients to sell and/or promote their product.

3. Although he does not possess a degree, the petitioner attended Pratt Institute and the Art Students League. He has taught graphic designing at Pratt Institute, delivered lectures at the School of Visual Arts, and has written articles in various Art Magazines.

4. Capital was not an income producing factor and all income was derived from the personal services rendered by the petitioner.

5. No Federal, state or city statute regulates the activities or dictates the minimum educational requirements of a graphic designer.

6. The petitioner did not file unincorporated business returns for 1968, 1969, 1970 and 1971 upon the advice of his accountant.

7. The work "profession" implies attainments in professional knowledge in some department of science or learning and not mere skill and application of knowledge. Although the petitioner's activities as a graphic designer require special knowledge and skills, the application and nature of these attributes do not

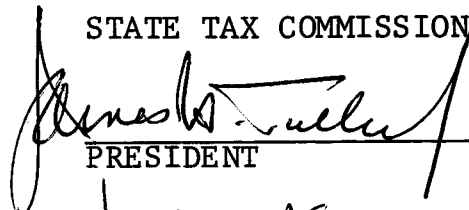
constitute a profession within the meaning and intent of section 703(c) of the Tax Law. In addition, the performing of services dealing with the promotion of sales or services does not constitute the practice of a profession even though the services involve the application of a specialized knowledge.

8. The petition of Irving Bogen is granted to the extent that the section 685(a) penalty imposed for the year 1968, and section 685(a)(1) and section 685(a)(2) penalties imposed for the years 1969, 1970 and 1971 are waived for reasonable cause.

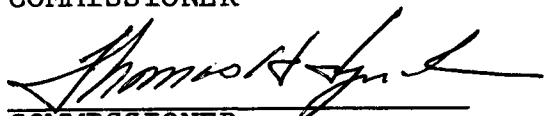
9. The Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued July 28, 1975 and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER