

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN J. BRAUTIGAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (3) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968, 1969, 1970 and 1971.

State of New York
County of Albany

Bruce Batchelor , 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 18th day of January , 1977 , she served the within
Notice of Decision by (certified) mail upon Norman J.

Brautigan (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Norman J. Brautigan
75 Huntley Road
Buffalo, New York 14215

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

18th day of January , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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AFFIDAVIT OF MAILING

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of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968, 1969, 1970 and 1971

State of New York
County of Albany

Bruce Batchelor, 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 18th day of January, 1977, she served the within
Notice of Decision by (certified) mail upon Chester A.
Pearlman, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Chester A. Pearlman, Esq.
1521 Hotel Statler Hilton
Buffalo, New York 14202

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

18th day of January, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **497-1723**

January 18, 1977

Mr. Norman J. Brautigan
75 Huntley Road
Buffalo, New York 14215

Dear Mr. Brautigan:

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

Please take further notice that pursuant to
Section(1) **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: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NORMAN J. BRAUTIGAN	:	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, Norman J. Brautigan, residing at 75 Huntley Road, Buffalo, New York 14215, 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. 0-58659418 and 1-78795587).

A small claims hearing was held September 13, 1976 at 1:15 p.m. at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, before Harry Huebsch, Hearing Officer. The petitioner appeared with his representative, Chester A. Pearlman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUE

Was income received from services performed as a professional manager subject to unincorporated business taxes for the years 1968, 1969, 1970 and 1971?

FINDINGS OF FACT

1. Petitioner, Norman J. Brautigan, filed New York State personal income tax returns for 1968, 1969, 1970 and 1971. For each of said years, petitioner, Norman J. Brautigan, indicated his occupation as manager and reported his income as professional manager business income. The Income Tax Bureau held that he was self-employed and that the income earned as a professional manager was subject to unincorporated business tax. Notices of Deficiency were issued dated July 29, 1974 in the amount of \$1,026.33 unincorporated business tax due, plus \$387.20 penalty, plus \$234.48 interest for a total sum of \$1,648.01.

2. Petitioner, Norman J. Brautigan, entered into an agreement dated February 28, 1969 with the New York State Niagara Frontier State Park Commission, hereafter called the Commission, to manage a concession called Cave of the Winds, at Niagara Falls, New York. The agreement was not the result of a bid. The agreement was offered to petitioner, Norman J. Brautigan, because the former manager resigned and petitioner, Norman J. Brautigan, had assisted him in 1968 and was familiar with the operation.

3. The agreement specifies the duties and limitations of employment. It fixes his compensation at a certain rate and as an expense of the concession and also makes provisions for the

Commission to receive all profits of the concession. It provides that the Commission will make repairs, approve disbursements and dictates the opening and closing dates and daily hours of the concession. Any employee of the concession could be fired by the Commission.

4. Petitioner, Norman J. Brautigan, was controlled by the Commission as to the hiring of and wages for employees. The Commission considered petitioner, Norman J. Brautigan, a paid manager who operated the concession in its behalf.

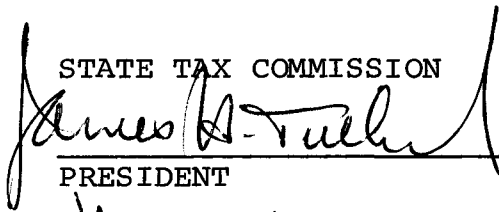
CONCLUSIONS OF LAW

A. That petitioner, Norman J. Brautigan, rendered services for the New York State Niagara Frontier State Park Commission as an employee and was not engaged in the carrying on of an unincorporated business during the years 1968, 1969, 1970 and 1971 in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the petition of Norman J. Brautigan is granted and the Notice of Deficiency dated July 29, 1974 is cancelled.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER