

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CAVALIERI

AFFIDAVIT OF MAILING

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

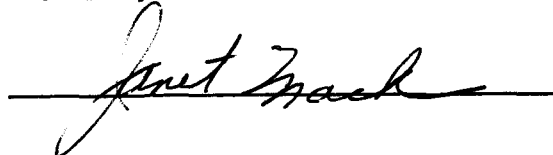
State of New York
County of Albany

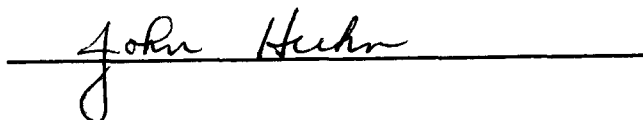
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of November , 1977 , she served the within
Notice of Decision by (certified) mail upon John
Cavalieri ~~(XXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John Cavalieri
4 Harvey Road
Whittier Oaks, Morganville
New Jersey
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 ~~XXXXXX~~
~~(XXXX)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

25th day of November , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CAVALIERI

AFFIDAVIT OF MAILING

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

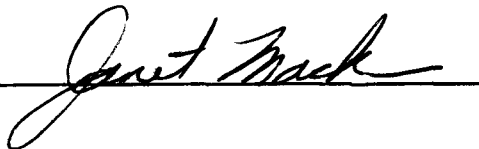
State of New York
County of Albany

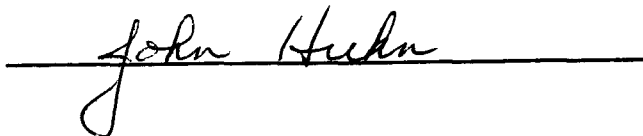
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of November, 1977, he served the within
Notice of Decision by (certified) mail upon Leonard
Kwatinetz, CPA (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leonard Kwatinetz, CPA
1450 Broadway
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
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

25th day of November, 1977.







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

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

November 25, 1977

**John Cavaliari
4 Harvey Road
Whittier Oaks
Morganville, New Jersey**

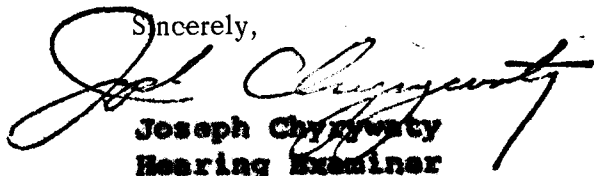
Dear Mr. Cavaliari:

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 ~~(8)~~ **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 Chynoweth
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN CAVALIERI	:	
for Redetermination of a Deficiency or for:		DECISION
Refund of Unincorporated Business Tax		
under Article 23 of the Tax Law for the	:	
Years 1968, 1969 and 1970.	:	

Petitioner, John Cavalieri, residing at 4 Harvey Road, Whittier Oaks, Morganville, New Jersey, 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 1968, 1969 and 1970 (File No. 11953).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1976 at 1:15 P.M. The petitioner appeared pro se and by Leonard Kwatinetz, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the petitioner, John Cavalieri's activities as an art consultant during the years 1968, 1969 and 1970, constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner and his wife filed New York State income tax nonresident returns for the years 1968, 1969 and 1970, showing his entire income to be derived from New York sources. On these returns, he stated that his type of business was that of an advertising artist. He did not file unincorporated business tax returns for said years.

2. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioner in the sum of \$2,050.32, upon the grounds that the income he received as an advertising artist during the years 1968, 1969 and 1970 was subject to unincorporated business tax.

3. During the years 1968, 1969 and 1970, petitioner was an art consultant. His activities as an art consultant consisted of advising business firms and institutional organizations about methods and techniques available to them so as to effectively relay desired information to clients, employees, the public, etc. In most instances, he did not present written reports or artistic renditions to his clients in the performance of his consulting activities.

4. Petitioner maintained an office, answering service and bank account in New York City. In addition, he maintained an office in his New Jersey home, where he contended that he performed approximately eighty percent of his work.

5. Petitioner contended that the income he received during the years 1968, 1969 and 1970 was exempt from the imposition of unincorporated business tax since his activities constituted the carrying on of a profession. He further contended that although he had reported his entire income as being derived from New York sources on the New York State income tax nonresident returns filed for said years, he had done so in error, and should the State Tax Commission

decide that his income for those years was subject to unincorporated business tax, he is entitled to allocate eighty percent of his unincorporated business income to sources without New York.

6. Petitioner did not present evidence to establish that he maintained a bona fide office at his home in New Jersey.

CONCLUSIONS OF LAW

A. That petitioner's activities as an art consultant during the years 1968, 1969 and 1970 did not constitute the carrying on of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That petitioner's activities as an art consultant during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

C. That the petitioner had an office in New York State; that he did not sustain the burden of proof necessary to establish that he maintained a bona fide office without New York; that, therefore, his entire unincorporated business income is allocable to New York State.

D. That the petition of John Cavalieri is denied and the Notice of Deficiency issued on September 29, 1975 is sustained, together with such interest as may be lawfully due.

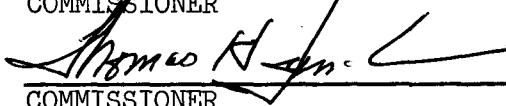
DATED: Albany, New York

November 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER