

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD CORNUELLE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(2)~~ 23 of the :  
Tax Law for the Year ~~(1971-1972)~~ :  
1972

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 29th day of September, 1977, he served the within

Notice of Decision by (certified) mail upon Richard Cornuelle

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

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

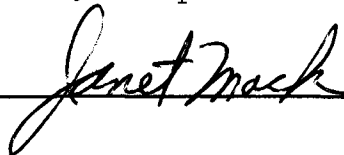
as follows: Richard Cornuelle  
327 E. 18th Street  
New York, New York 10003

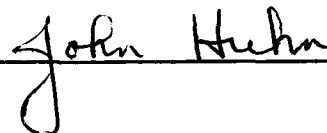
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~(representative of)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

29th day of September, 1977.

  
\_\_\_\_\_

  
\_\_\_\_\_



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

September 29, 1977

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

Richard Cornuelle  
327 E. 18th Street  
New York, New York 10003

Dear Mr. Cornuelle:

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 ~~(x)~~ **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,

JOHN J. SOLLITTO  
DIRECTOR

~~XXXXXX~~ ~~Partnership Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
RICHARD CORNUELLE : DECISION  
for Redetermination of a Deficiency or for:  
Refund of Unincorporated Business Tax  
under Article 23 of the Tax Law for the :  
Year 1972. :  
:

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Petitioner, Richard Cornuelle, 327 E. 18th Street, New York, New York 10003, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1972. (File No. 11974)

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 18, 1977 at 3:00 P.M.. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the writing activities of petitioner, Richard Cornuelle, were exempt from the unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Richard Cornuelle, filed a New York State resident income tax return for the year 1972. He listed \$9,000.00 in wages and \$34,390.00 as business income as a writer. Petitioner did not file an unincorporated business tax return for 1972.

2. On July 28, 1975, as the result of a field audit, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Richard Cornuelle, imposing unincorporated business tax of \$1,596.64, plus \$272.63 in interest. The Income Tax Bureau also issued to the petitioner on the aforesaid date a Statement of Audit Changes imposing additional personal income tax of \$798.87, plus \$136.41 in interest. Accordingly, a Notice of Deficiency was issued totaling \$2,804.55. Petitioner is not contesting the imposition of additional personal income tax.

3. In 1972, petitioner received \$4,500.00 as a Hoover Institution Grant at Stamford University. The research and writing done under this grant was later incorporated into a book which was published in 1974 and titled De-Managing America: The Final Revolution. This was an esoteric and scholarly study on social theory.

4. In 1972, petitioner received \$18,000.00 from Underwriter's Laboratories (a non-profit organization) in Chicago for various memoranda written for use as testimony before Congressional committee hearings on the feasibility of the establishment of a Consumer Products Safety Commission. He offered no documentary or other substantial evidence illustrative of these memoranda.

5. In 1972, petitioner received \$18,000.00 from the National Center for Voluntary Action in Washington, D.C. (a non-profit organization) for a study entitled The Research Needs of the Independent Sector. The stated purpose of the project in its introduction was, "to identify the most critical gaps in our knowledge about the independent sector and to suggest a specific research program to begin to fill them." The report was a scholarly study of the state of knowledge of the independent sector. The independent sector is a composite of policy-affecting entities apart from the commercial and public sectors' equivalent entities.

6. In 1972, petitioner was paid a fee of \$4,833.00 by the Fashion Institute of Technology (an educational institution financed by the City and State of New York). He was also paid \$9,000.00 in wages by the aforementioned institution. He wrote various memoranda for F.I.T., including reports for the president of the institute in his capacity as a member of the National Advisory Council on Vocational Education.

This council is composed of 21 persons appointed by the President of the United States, and was created by the Congress through the Vocational Education Act Amendments of 1968. It is charged by law to advise the Commissioner of Education on the operation of vocational education programs, to make recommendations concerning such programs, and to make annual reports to the Secretary of Health, Education and Welfare for transmittal to Congress. The aforementioned reports were in pursuance of the charge to the National Advisory Council on Vocational Education.

7. In 1972, petitioner received \$7,500.00 from various profit-making organizations for writing speeches for corporate officers and for writing brochures which involved the business functions of these organizations.

#### CONCLUSIONS OF LAW

A. That income received from the Hoover Insitution Grant at Stamford University by petitioner, Richard Cornuelle, in 1972 was for writing which was not related to any business function of the University and thus is exempt from the unincorporated business tax as professional work within the meaning and intent of section 703(c) of the Tax Law.

B. That since no documentary or other substantial evidence was offered to prove that income received by petitioner, Richard Cornuelle, in 1972 from Underwriter's Laboratories was for scholarly study and not for use in a business function, therefore said income is not exempt from the unincorporated business tax as professional work within the meaning and intent of section 703(c) of the Tax Law.

C. That since the income received by petitioner, Richard Cornuelle, in 1972 from the National Center for Voluntary Action was for a scholarly study in an esoteric area and was not related to any business function of the National Center for Voluntary Action, it is thus exempt from the unincorporated business tax as professional work within the meaning and intent of section 703(c) of the Tax Law.

D. That the income received by petitioner, Richard Cornuelle, in 1972 from the Fashion Institute of Technology was for writing not related to any business function of the Fashion Institute of Technology and is thus exempt from the unincorporated business tax as professional work within the meaning and intent of section 703(c) of the Tax Law.

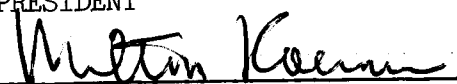
E. That the petition of Richard Cornuelle is granted to the extent indicated in Conclusions of Law "A", "C" and "D"; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued July 28, 1975, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER