

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR DANA

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) ~~XXXXXX~~ (s) :
1966 & 1967.

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, 1977, she served the within
Notice of Decision by (certified) mail upon Arthur
Dana ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Arthur Dana
80 Percheron Lane
Roslyn Heights, New York 11577
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 ~~XXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

22nd day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR DANA

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) ~~1966 & 1967~~ :
1966 & 1967.

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, 1977, she served the within Notice of Decision by (certified) mail upon Joseph Matatia, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph Matatia, Esq.
Matatia and Matatia, Esqs.
99 Park Avenue
New York, New York
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

22nd day of August, 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

August 22, 1977

**Mr. Arthur Dana
80 Percheron Lane
Roslyn Heights, New York 11577**

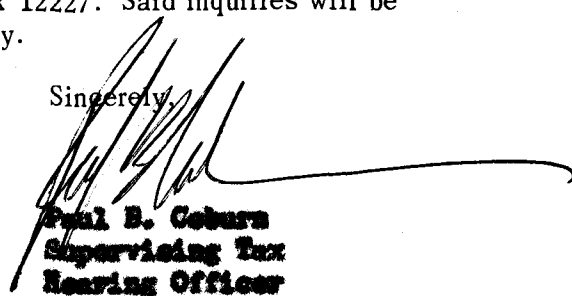
Dear Mr. Dana:

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 **(E) 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,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARTHUR DANA	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966 and 1967.	:	

Petitioner, Arthur Dana, 80 Percheron Lane, Roslyn Heights, New York 11577, 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 1966 and 1967. (File No. 00214)

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 September 15, 1976 at 2:45 p.m. The petitioner appeared by Matatia and Matatia (Joseph Matatia, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Arnold Dorman, Esq. of counsel).

ISSUE

Whether the income of petitioner received as a graphic arts consultant was subject to unincorporated business tax for the years 1966 and 1967.

FINDINGS OF FACT

1. On December 28, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Arthur Dana, for the years 1966 and 1967. It imposed unincorporated business tax on the ground that his services for Ad Graphics, Inc., Alden Press, Inc. and the Printset Company were deemed part of his business regularly carried on under the trade name and style of "Dana Art". For petitioner's failure to substantiate that he had a regular place of business outside the State, the entire excess of his unincorporated business gross income over unincorporated business deductions was allocated to New York. Accordingly, a Notice of Deficiency was issued on December 28, 1973 in the amount of \$6,716.39, plus penalty and interest of \$4,532.07, for a total due of \$11,248.46.

2. During the years in issue, petitioner, Arthur Dana, was an expert in the photographic arts field, as well as president of Ad Graphics, Inc. and owner of two-thirds of its stock. The company did promotional work, direct mail and mail-order preparation work in the advertising field. Arthur Dana was paid a salary which was reported on a W-2 form for income tax purposes. Withholding tax was paid, as was unemployment insurance. He participated in the company's pension program

as an employee. He filed a Federal Schedule "C" for this business.

3. Petitioner, Arthur Dana, had a telephone listing for "Dana Art" (followed by "advertising") at the address of Ad Graphics, Inc., 200 Madison Avenue, New York, New York. He alleged he had no interest in, does not personally employ anyone nor does he have any knowledge of any company known as "Dana Art".

4. Petitioner, Arthur Dana, worked in the supervisory and representative capacity and consultant to Alden Press, Inc., Chicago, Illinois. This company could handle any and all printing work. As an employee, he received a fixed salary. That was reported as per his W-2 form which indicated total withholding tax. He also participated in their pension and profit-sharing plans. Federal form 1099's indicated the commissions he received, based on the gross volume of business he brought into this company. Arthur Dana was provided with an office in this Chicago firm and was afforded secretarial and telephone answering services without reimbursement. His business card stated that he was the "Eastern Marketing Director" for Alden Press, Inc. His expenses for travel, entertainment and telephones were not reimbursed by the company. He spent

ten or more days per month in the Chicago office. Alden Press, Inc. rented an office at 200 Madison Avenue, New York, New York with two desks, a copying machine and a telephone used by extra salesmen hired within New York. Arthur Dana owned seven percent of the stock in this company.

5. In 1966 and 1967, petitioner, Arthur Dana, was a partner in the Printset Company, 200 Madison Avenue, New York, New York. The company was formed as a traffic control on printing material for work that came through New York to be shipped to Alden Press, Inc., Chicago, Illinois. They had two employees, a shipping clerk and the other partner. They filed and paid unincorporated business tax on this business. Arthur Dana filed no unincorporated business tax return. He owned two-thirds of the partnership in the Printset Company.

6. In 1966 and 1967, petitioner, Arthur Dana, set aside a room in his residence in Roslyn Heights for business purposes, where he kept files, did some typing and used one of two phones therein. This room was used nightly and on weekends. He deducted \$600.00 on his Federal Schedule "C" for it. He listed his principal business activity as "Graphic Arts Consultant".

7. At times, in 1966 and 1967, petitioner, Arthur Dana, received correspondence relating to Alden Press, Inc. at 200

Madison Avenue, New York, New York, as well as copies of company correspondence relating to activities of said corporation. Some of petitioner's clients would require the services of all three businesses--Ad Graphics, Alden Press and Printset Co.

8. Petitioner, Arthur Dana, did not offer any documentary or other substantial evidence as to the division of his time spent between his various businesses during the years in issue.

9. Petitioner, Arthur Dana, was advised on tax matters by certified public accountants who also prepared his tax returns for 1966 and 1967.

10. Petitioner, Arthur Dana's employment and endeavor with the three concerns, Ad Graphics, Inc., Alden Press, Inc. and the Printset Co., was in the furtherance of his regular business of graphic arts consultant.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Arthur Dana, during the years 1966 and 1967 constituted income from his regular business as a graphic arts consultant, and not compensation as an employee exempt from the imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the activities of petitioner, Arthur Dana, as a graphic arts consultant during the years 1966 and 1967 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the services rendered by petitioner, Arthur Dana, during the years 1966 and 1967 as an officer of Ad Graphics, Inc., as a consultant to Alden Press, Inc. and a partner in the Printset Co., were so integrated and interrelated as to constitute part of a business regularly carried on by him as a graphic arts consultant; and therefore, the salaries received by him were not exempt from the imposition of an unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

D. That petitioner, Arthur Dana, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1966 and 1967 and, therefore, the penalties assessed against him pursuant to sections 685(a) and (b) of the Tax Law are waived.

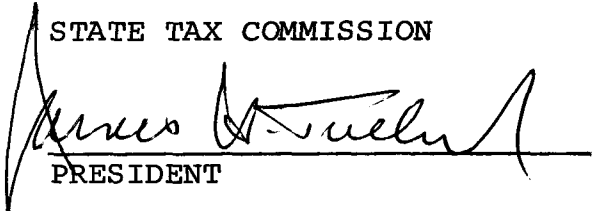
E. That since the petitioner, Arthur Dana, did not have a regular place of business outside of New York State during the

years 1966 and 1967, all of his business income was properly allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

F. That the petition of Arthur Dana is granted to the extent of cancelling the penalties imposed pursuant to sections 685(a) and (b) of the Tax Law for the years 1966 and 1967; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued December 28, 1973, and, that 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