

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CORNELIUS DUBOIS

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) ~~xxxPctxxx~~ :
1969, 1970, 1971 & 1972

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 24 day of August, 19 77, she served the within
Notice of Decision by (certified) mail upon Cornelius Dubois

~~xxxPctxxx~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Cornelius Dubois
120 East 90th Street
New York, New York 10028

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 ~~xxxPctxxx~~
~~xxxPctxxx~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~xxxPctxxx~~ petitioner.

Sworn to before me this

24 day of August, 19 77

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CORNELIUS DUBOIS

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) ~~xxx-xxxxxx~~ :
1969, 1970, 1971 and 1972

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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Walter E. Beer, Jr., Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Walter E. Beer, Jr., Esq.
80 Pine Street
New York, New York 10005
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

24 day of August, 1977.

Marsina Donnini

Jaxet 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 24, 1977

**Mr. Cornelius Dubois
120 East 90th Street
New York, New York 10028**

Dear Mr. Dubois:

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 ~~722~~ **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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
: of :
: CORNELIUS DUBOIS :
: DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1969, 1970, 1971 and :
1972. :

Petitioner, Cornelius DuBois, residing at 120 East 90th Street, New York, New York 10028, filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970, 1971 and 1972. (File No. 13155). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 30, 1977 at 1:15 P.M. Petitioner appeared with his representative, Walter E. Beer, Jr., Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Francis Cosgrove, of counsel).

I. Did petitioner's activities during the years 1969, 1970, 1971 and 1972 as a market and public opinion research consultant constitute the practice of a profession?

II. Was the Notice of Deficiency issued before the expiration of the statutory limitation on assessment?

FINDINGS OF FACT

1. During the years 1969, 1970, 1971 and 1972, petitioner performed services as an independent market and public opinion research consultant for universities, nonprofit organizations and profit oriented businesses who came to him requesting his services and paid him a fee for said services.

2. A market and public opinion research consultant designs the research procedure to be followed by his client or he may advise that no research is required. He does not do the actual research and public testing himself. He may evaluate the results of the research.

3. Petitioner earned a B.A. degree at Harvard University. His major was English. He never took courses in market research or public opinion research. Petitioner gained his skill and knowledge from many years of working experience in this field of endeavor. He wrote many articles and a few unpublished books on the subject and belonged to many associations involved in research, marketing and advertising.

4. There were no specific educational requirements for the performance of services as a market and public opinion research consultant. There was no established code of ethics and licensing by the New York State Education Department was not a prerequisite.

5. Petitioner attached a note to each New York State personal income tax return filed for the year 1969, 1970, 1971 and 1972 in which he disclaimed liability for unincorporated business tax upon the grounds that he was engaged in the practice of a profession. Petitioner relied on authoritative advice in not filing unincorporated business tax returns for said years.

6. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner for the years 1969 through 1972 in the sum of \$2,456.70 including penalties under sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to timely file unincorporated business tax returns and to pay the tax when due for said years. The notice was issued on the grounds that the income from petitioner's activities was subject to the unincorporated business tax.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Cornelius DuBois, as a market and public opinion research consultant during the years 1969, 1970, 1971 and 1972, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Cornelius DuBois, during said years constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That although the Notice of Deficiency was issued timely in accordance with section 683(c)(1)(A) and section 722 of the Tax Law, petitioner had reasonable cause for not filing New York State unincorporated business tax returns for the years in question and all penalties are cancelled.

D. That the petition of Cornelius DuBois is granted only to the extent of cancelling all penalties and; except as so granted, is in all other respects denied and the Notice of Deficiency issued March 31, 1975 is sustained.

DATED: Albany, New York
August 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER