

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARK TOWERS MUSIC

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 ~~years xxxxxxxx~~ :  
Fiscal Year Ending June 30, 1967 and :  
Fiscal Year Ending June 30, 1968.  
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 26th day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Mark Towers Music

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mark Towers Music  
98 Cuttermill Road  
Great Neck, 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

26th day of August, 1977.

Marsina L. Donnini

Janet M. Mch

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARK TOWERS MUSIC

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 ~~XXXX(s) or Period(s)~~ :  
Fiscal Year Ending June 30, 1967 and  
Fiscal Year Ending June 30, 1968.  
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 26th day of August , 1977 , she served the within  
Notice of Decision by (certified) mail upon Irving Husin  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Irving Husin, Esq.  
Husin, Miller & Levy  
27 William 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

26th day of August , 1977.

Marsina Donnini

Janet Mach



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

**August 26, 1977**

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

**Mark Towers Music  
98 Cuttermill Road  
Great Neck, New York**

**Gentlemen:**

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 **(b) 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

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In the Matter of the Petition	:	
	:	
of	:	
	:	DECISION
MARK TOWERS MUSIC	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Fiscal Year Ending June 30,	:	
1967 and Fiscal Year Ending June 30, 1968.	:	

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Petitioner, Mark Towers Music, a partnership, 1775 Broadway, New York, New York 10019, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the fiscal year ending June 30, 1967 and fiscal year ending June 30, 1968. (File No. 01925).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1976 at 1:00 P.M. Petitioner appeared by Husin, Miller and Levy (Irving Husin, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUE

Whether the business activities of petitioner, Mark Towers Music, during the fiscal year ending June 30, 1967 and the fiscal year ending June 30, 1968 constituted the practice of a profession.

FINDINGS OF FACT

1. Petitioner, Mark Towers Music, filed New York State partnership returns for the fiscal years ending June 30, 1967 and June 30, 1968. Petitioner failed to fill out Schedule "U-D", Unincorporated Business Tax and Payments, on the aforementioned returns.

2. On July 27, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, imposing unincorporated business tax for the fiscal years ending June 30, 1967 and June 30, 1968. It asserted deficiencies of \$4,478.37, plus \$747.75 in interest, and \$7,417.09, plus \$793.41 in interest, respectively, upon the grounds that business activities of petitioner constituted the carrying on of an unincorporated business during the period in issue. Accordingly, a Notice of Deficiency was issued totalling \$13,436.62.

3. Petitioner, Mark Towers Music, was a partnership which contracted with a client to provide music and/or other types of entertainment such as, comedians, magicians, etc. The musicians ("side-men") would be hired by petitioner, with one of the partners sometimes working the engagement as their "leader". On other occasions, none of the partners of petitioner would work the engagement and one of their musicians, whom they obtained from the local union for particular occasions, would work as leader.

4. Petitioner, Mark Towers Music, paid health insurance benefits, provided W-2 forms and withheld taxes, had an employer's identification number with New York State and paid workmen's compensation and disability insurance for the musicians it used from time to time for various engagements.

5. Petitioner, Mark Towers Music, hired a part-time contractor to obtain musicians for various engagements, who was paid on a weekly basis.

6. Petitioner, Mark Towers Music, paid commissions to various parties for soliciting clients for petitioner.

7. Petitioner, Mark Towers Music, broke down the income of its partners as follows:

FISCAL YEAR ENDING 6/30/67

	<u>Stuart Allen</u>	<u>Albert Wayne</u>	<u>Herbert Street</u>	<u>Bruce Sark</u>	<u>Vic Gerard</u>	<u>=%ofTotal</u>
Personal Service	\$3,913.00	\$3,819.00	\$5,555.00	\$12,247.00	\$4,199.00	20.94%
Office Salary	7,650.00	7,650.00	7,650.00	2,750.00	2,100.00	19.58%
Share of Profit	<u>21,611.01</u>	<u>21,611.00</u>	<u>21,611.00</u>	<u>12,494.01</u>	<u>7,099.22</u>	<u>59.44%</u>
TOTAL	\$33,174.01	\$33,080.00	\$34,816.00	\$27,491.01	\$13,398.22	100%

FISCAL YEAR ENDING 6/30/68

	<u>Stuart Allen</u>	<u>Albert Wayne</u>	<u>Herbert Street</u>	<u>Bruce Sark</u>	<u>Vic Gerard</u>	<u>=%ofTotal</u>
Personal Service	\$2,085.00	\$6,527.00	\$6,690.00	\$15,307.00	\$4,194.00	18.68%
Office Salary	7,800.00	7,800.00	7,800.00	3,900.00	3,900.00	16.75%
Share of Profit	<u>28,466.68</u>	<u>28,466.68</u>	<u>28,468.68</u>	<u>16,638.90</u>	<u>18,238.91</u>	<u>64.57%</u>
Total	\$38,351.68	\$42,793.68	\$42,956.68	\$35,845.90	\$26,332.91	100%

Therefore, in fiscal year ending June 30, 1967, \$29,733.00 (20.94%) of partnership income was from personal service of the partners, while \$27,800.00 (19.58%) was their office salary and \$84,426.00 (59.44%) was allocated as profits; and for fiscal year ending June 30, 1968, \$34,803.00 (18.68%) of partnership income was from personal services of the partners, while \$31,200.00 (16.57%) was their office salary and \$120,277.83 (64.57%) was allocated as profits.

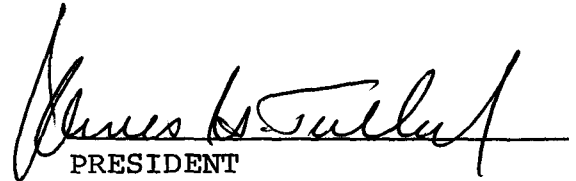
CONCLUSIONS OF LAW

A. That the gross income for petitioner, Mark Towers Music, from the personal service of its partners in their capacity as musicians was less than 80% for each of the two fiscal years ending June 30, 1967 and June 30, 1968. The petitioner failed to establish what portion of the share of profits for the years in issue was attributable to the personal services of its partners in their professional capacity as musicians. That, therefore, petitioner cannot be held to have been engaged in the practice of a profession during the period in issue within the meaning and intent of section 703(c) of the Tax Law.


B. That the petition of Mark Towers Music is denied and the Notice of Deficiency issued July 27, 1970 is sustained.

DATED: Albany, New York  
August 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER