

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BEN ROSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~30~~ 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1968, 1969 and 1970

State of New York
County of Albany

Bruce Batchelor , 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 26 day of April , 1977, he served the within
Notice of Decision by (certified) mail upon Ben Rosen
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ben Rosen
85 Hillside Avenue
Tenafly, New Jersey 07670
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

26 day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BEN ROSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(3)~~ 23 of the :
Tax Law for the Year(s) ~~xxx xxxxxx~~ :
1968, 1969 and 1970.

State of New York
County of Albany

Bruce Batchelor , 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 26 day of April , 1977, she served the within
Notice of Decision by (certified) mail upon Matthew F. Magidson, Esq.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Matthew F. Magidson, Esq.
c/o Laitman, Mathews & Magidson
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

26 day of April , 1977.

Bruce Batchelor

Janet MacL



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

April 26, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-1723**

Mr. Ben Rosen
85 Hillside Avenue
Tenafly, New Jersey 07670

Dear Sir:

Please take notice of the **Decision**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~601~~ **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

FRANK S. PUCCIA

Supervisor of

Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Ben Rosen, residing at 85 Hillside Avenue, Tenafly, New Jersey 07670, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1969 and 1970 (TAB #280).

On December 10, 1976, petitioner, Ben Rosen, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file.

ISSUES

I. Did petitioner, Ben Rosen's activities during the years 1968, 1969 and 1970 constitute the practice of the profession of industrial designer or was he engaged in the carrying on of an unincorporated business as an "advertising designing consultant"?

II. Was petitioner, Ben Rosen's income derived from his designing activities allocable as to days worked within and without New York State?

III. Was royalty income, exempt from the unincorporated business tax, included in petitioner's gross income?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Ben Rosen, contended that he was engaged in the practice of the profession of industrial design during the years 1968, 1969 and 1970 and that he performed services within and without New York State during said years. He also contended that royalty income from a book he had written was included in gross income and said royalty income was not subject to the unincorporated business tax.

2. Petitioner, Ben Rosen, filed New York State personal income nonresident tax returns for the years 1968, 1969 and 1970 in which he reported business income derived from "advertising designing consultant." He did not allocate his income as to days worked within and without New York State nor did he report royalty income on the tax returns for said years.

3. Petitioner, Ben Rosen, received a degree from Pratt Institute. His college major was advertising design.

4. Petitioner, Ben Rosen, did not submit documentary evidence to support any of his contentions regarding the nature of service he performed, where he performed these services or as to the royalty income.

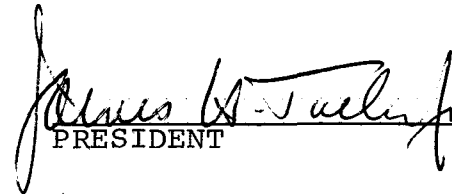
5. That petitioner, Ben Rosen, was engaged in the carrying on of the unincorporated business of advertising designing consultant during the years 1968, 1969 and 1970 and that the income so derived was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.

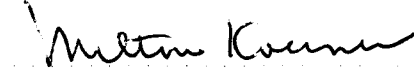
6. That petitioner, Ben Rosen, did not substantiate the burden of proof in accordance with section 689(e) of the Tax Law, that he performed services within and without New York State or that he earned royalty income and that said royalty income was included in business income during the years 1968, 1969 and 1970.

7. That the petition of Ben Rosen is denied and the Notice of Deficiency in the amount of \$3,697.05 issued May 21, 1973 for the years 1968, 1969 and 1970 is sustained.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER