

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH STEIN

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) ~~XXX Period(s)~~ :  
1968, 1969, 1970.

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 26 day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Joseph  
Stein ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Joseph Stein  
1130 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)~~  
~~XXXXXX~~ 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 Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH STEIN

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) ~~XXXX~~ Period(s) :  
1968, 1969, 1970.

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 26 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Martin B. Jaffe, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Martin B. Jaffe, Esq.  
Lazarow, Rettig & Sundel, Esqs.  
119 West 57th Street  
New York, New York 10019  
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 M. [Signature]



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 26, 1977

Mr. Joseph Stein  
1130 Park Avenue  
New York, New York

Dear Mr. Stein:

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(s) **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. Codurn  
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	:	
	:	
JOSEPH STEIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969 and 1970.	:	

---

The petitioner, Joseph Stein, residing at 1130 Park Avenue, New York, New York, 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 1968, 1969 and 1970.

(File No. 13424)

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 19, 1977 at 9:35 a.m. The petitioner appeared by Lazarow, Rettig & Sundel, Esqs. (Martin B. Jaffe, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq. of counsel).

ISSUE

Whether the activities of the petitioner, Joseph Stein, as an author writing the "book" for theatrical shows during the

years in issue, constitutes the practice of a profession exempt from the unincorporated business tax.

FINDINGS OF FACT

1. Joseph Stein and Sadie Stein, his wife, filed New York State combined income tax returns (for resident married persons filing a joint Federal return who elect to file separate New York State returns on the same form) for the years 1968, 1969 and 1970. The petitioner, Joseph Stein, did not file unincorporated business tax returns for the aforesaid years. On October 28, 1974, the Income Tax Bureau mailed to the petitioner, Joseph Stein, a Statement of Audit Changes imposing unincorporated business tax for the years 1968, 1969 and 1970 in the amount of \$28,988.14, plus penalty under section 685(a) of \$7,247.03 and interest of \$7,763.96, for a total of \$43,999.13. Accordingly, it issued a Notice of Deficiency therefor. The petitioner timely filed a petition for redetermination or for refund of said deficiency.

2. The petitioner, Joseph Stein, graduated from the College of the City of New York with a Bachelor of Social Sciences degree. He received a Master of Social Sciences degree from Columbia University. He originally started work as a psychiatric social worker but shortly thereafter he was involved in writing scripts for radio and television. In television he wrote for the "Show

of Shows" and the "Sid Caesar Show". He wrote for Broadway shows, e.g., "Mrs. Gibbon's Boys", "Plain and Fancy", "Mr. Wonderful", "Body Beautiful", "Juno", "Take Me Along", "Enter Laughing", "Fiddler on the Roof", "Zorba" and others. With respect to musicals, Mr. Stein only writes the "book", not the lyrics. He only writes the dialogue spoken by the actors and their stage instructions.

3. During the years in issue, the petitioner was self-employed. Mr. Stein's business income was derived from royalties in connection with Broadway shows, movies or television in which he wrote the "book". The writings by the petitioner consisted of adaptations of other works (such as novels and short stories) into plays. Petitioner's writings were original and copyrights were issued with respect to these writings. He also reported salary income as an officer from two solely-owned corporations for which he rendered services as an author. Mr. Stein would, upon occasion, be called upon to "doctor" a play, that is, to rewrite a scene or an act.

4. During the years in issue, Mr. Stein received royalties as an author for writing the book for the following plays: "Fiddler on the Roof", "Enter Laughing", "Zorba", "Plain and Fancy", "Harry's Girls", "Mrs. Gibbons", "Take Me Away", "Mr.

Wonderful", "The Rothschilds" and "Minnie's Boys". Mr. Stein derived his income from literary work as a dramatist. The income was a result of his own efforts. He employed no other writers. He did not write advertising copy or commercials for use on television or radio.

5. The business income derived by the petitioner during the years in issue was solely that of an author. Capital was not a material income producing factor. More than eighty percent of the business gross income for the taxable years in issue was derived from the personal services actually rendered by petitioner.

CONCLUSIONS OF LAW

A. That in an opinion of former counsel dated October 27, 1966, it was stated that:

"It is my opinion that the production of literary work by an author - - including dramatic works or scripts for production on the stage, in motion pictures or on television or radio - - is the practice of a profession within the meaning of section 703(c) of the Tax Law. This means that an author's income from such work is not subject to the unincorporated business tax provided he satisfies the requirements that capital is not a material income producing factor and that the gross income is derived, to the extent of at least 80% from his own personal services.

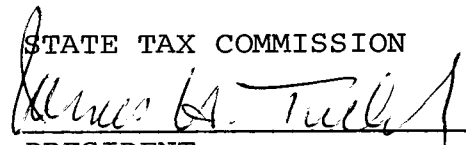
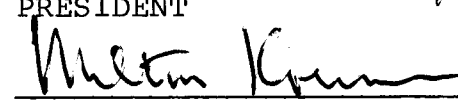
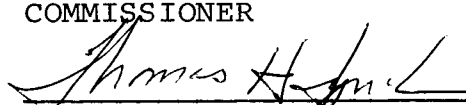
"The general rule stated above is subject to one exception. A self-employed writer whose work consists of advertising copy, commercials for use on television or radio, or other material having a similar business purpose and use is deemed to be engaged in an unincorporated business and subject to the tax on his income from work of this type." (New York State Tax Bulletin No. 1966-4)

B. That the activities of the petitioner, Joseph Stein, during the years in issue as an author constituted the practice of a profession in which capital was not a material income producing factor and in which more than eighty percent of the business gross income was derived from personal services actually rendered by him.

C. That the business income of the petitioner, Joseph Stein, derived from his profession as an author during the years in issue was exempt from the unincorporated business tax within the intent and meaning of section 703(c) of the Tax Law.

D. That the petition of Joseph Stein is granted and the Notice of Deficiency for the years 1968, 1969 and 1970 be and the same is hereby cancelled.

DATED: Albany, New York  
August 26, 1977

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER