

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MALCOLM W. VALLANCE

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~~ ~~xxxxxx~~ :
1967 through 1970

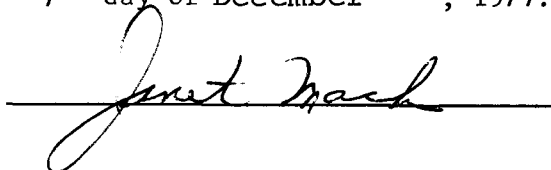
State of New York
County of Albany

John Huhn, 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 7 day of December, 1977, she served the within
Notice of Decision by (certified) mail upon Malcolm W.
Vallance
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Malcolm W. Vallance
224 Colonial Lane
Palm Beach Florida 33480
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

7 day of December, 1977.







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

December 7, 1977

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

**Malcolm W. Vallance
224 Colonial Lane
Palm Beach, Florida 33480**

Dear Mr. Vallance:

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,

**Joseph Chyrywaty
Hearing Examiner**

cc: ~~Revisions/Representative~~

Taxing Bureau's Representative

FINDINGS OF FACT

1. On March 31, 1975, the Income Tax Bureau issued notices of deficiency against the petitioner, Malcolm W. Vallance, for the years 1967, 1968, 1969 and 1970, imposing unincorporated business taxes upon the income received from his activities as a consultant.

2. During the years at issue, the petitioner received compensation from the following sources:

<u>Source</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Rodman A. Heeren	\$11,426	\$15,950	\$29,480	\$25,994
Ding Dong Citrus Corp.	5,000		15,000	10,000
Doris Duke			3,692	5,281
S. Rothchild			600	
R. Cushing		160		
Comer of London		<u>2,650</u>		
Totals	<u>\$16,426</u>	<u>\$18,760</u>	<u>\$48,772</u>	<u>\$41,275</u>

3. The petitioner, Malcolm W. Vallance, was hired in 1959 by Mr. Rodman Heeren to manage the Heeren household. These duties included hiring servants, decorating the home and purchasing household goods. He remained with Mr. Heeren during the years at issue, performing the duties of a household manager as well as assuming new responsibilities of a higher caliber. These new responsibilities included rendering services with respect to Mr. Heeren's financial investments and art collection. In regard to Mr. Heeren's financial investments, the petitioner contacted and met with investment brokers and attorneys. Petitioner also rendered services for Ding Dong Citrus Corp. at the direction of Mr. Heeren, who was the sole stockholder in that corporation. The services petitioner rendered for Ding Dong Citrus Corp. included his attending a variety of meetings for Mr. Heeren and his acting as liason for Mr. Heeren in the daily activities of

Ding Dong Citrus Corp. In regard to Mr. Heeren's art collection, petitioner was directed by Mr. Heeren to contact art museums and appraisers for the purpose of making contributions of various pieces of art work.

4. The petitioner reported daily to the home of Mr. Heeren in order to receive his schedule for the day. If Mr. Heeren was out of town, he would give the petitioner prior instructions or contact him by phone and give him an assignment. The petitioner was subject to the will and control of Mr. Heeren as to what was to be done.

5. The petitioner had an office in his home where he maintained some of Mr. Heeren's records. He used this office to perform services for Mr. Heeren during evening hours or during periods when Mr. Heeren was away from home.

6. The petitioner received compensation from Mr. Heeren in the form of wages and bonuses, and also from the Ding Dong Citrus Corp. in the form of bonuses. The bonuses he received were based on expenses he incurred and his work performances. Social security benefits were withheld from the wages paid to him by Mr. Heeren. No state or Federal income taxes were withheld from any compensation he received.

7. During the year 1968, the petitioner received \$2,650.00 from Comer of London. This compensation resulted from the purchase of furniture from Comer by Mr. Rodman Heeren. During 1969 and 1970, the petitioner received compensation from Mrs. Doris Duke who was an affluent friend of Mr. Heeren. The \$3,692.00 received from Mrs. Duke in 1969 was compensation for a single trip to London to purchase a valuable piece of art. The \$5,281.00 received in 1970 was compensation for the purchase of an expensive piece of jewelry. The acquisitions, which petitioner made for Doris Duke, S. Rothchild and R. Cushing during the years 1968, 1969 and 1970, were made at the request of Mr. Heeren.

8. Petitioner acted as a personal aide to Mr. Rodman Heeren, handling matters for him and for his company, Ding Dong Citrus Corp. He was directed by Mr. Heeren only, while handling these matters.

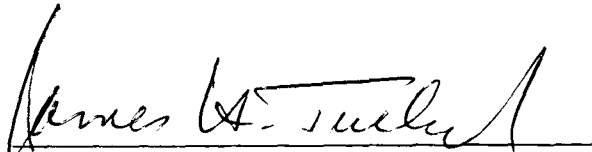
CONCLUSIONS OF LAW


A. That the income received by petitioner, Malcolm W. Vallance, from his activities as a personal consultant during the years 1967, 1968, 1969 and 1970, constituted compensation as an employee exempt from the imposition of unincorporated business tax in accordance with section 703(b) of the Tax Law. Although the petitioner received the major portion of his income from two sources, he was directed and controlled by Mr. Rodman Heeren only; therefore, there was no conflict concerning the right to control the petitioner's activities.

B. That the petition of Malcolm W. Vallance is granted and the notices of deficiency issued March 31, 1975 are cancelled.

DATED: Albany, New York
December 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER