

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERCOLE BELTRAMINI

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) ~~or Period(s)~~ :
1972, 1973 and 1974.

State of New York
County of Albany

John Huhn , 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 20th day of September , 1978, he served the within
Notice of Decision by (certified) mail upon Ercole Beltramini

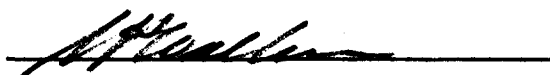
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ercole Beltramini
142 Wyoming Avenue
Maplewood, New Jersey 07040

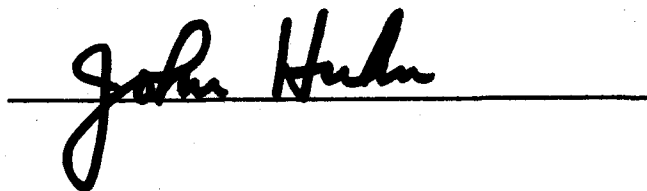
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20th day of September , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERCOLE BELTRAMINI

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (22) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1972, 1973 and 1974.

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 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon Michael J. Pasnik

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Michael J. Pasnik
88 South Finley Avenue
Basking Ridge, New Jersey

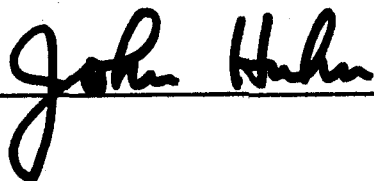
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20th day of September , 1978.







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

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

September 20, 1978

Mr. Nicolo Beltramini
142 Wyoming Avenue
Maplewood, New Jersey 07040

Dear Mr. Beltramini:

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) 782 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 Chirgantz
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ERCOLE BELTRAMINI	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1972, 1973 and 1974.	:	

Petitioner, Ercole Beltramini, 142 Wyoming Avenue, Maplewood, New Jersey 07040, 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 1972, 1973 and 1974 (File No. 15581).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1977 at 1:15 P.M. Petitioner appeared by Michael J. Pasnik, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner's activities during the years 1972, 1973 and 1974 constituted the carrying on of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Ercole Beltramini, filed New York State income tax nonresident returns for the years 1972, 1973 and 1974, on which he stated his occupation to be that of an "Artist" or "Commercial Artist" and reported the income from his activities as business income. No unincorporated business tax returns were filed for said years.

2. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner, on the grounds that his activities as an artist or commercial artist constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax.

3. Petitioner was a self-employed graphic arts designer, doing business under the name and style of Ercole Beltramini Associates, New York, New York.

4. Petitioner graduated from the Institute of Graphic Arts in Italy in 1953. He subsequently participated in and completed a four-year course of study in graphic arts and techniques of advertising.

5. Petitioner does not hold a degree earned in an educational institution located within the United States; however, he asserted that the degrees earned in Italy are similar to those awarded at Cooper Union or Pratt Institute.

6. Petitioner's activities involved the creation of brochures, pamphlets or other educational material for pharmaceutical products and services. This material was normally distributed to physicians and other related professions in the medical field by pharmaceutical houses.

7. Although petitioner's product was created and subsequently distributed as an educational service to the medical profession, it frequently introduced and promoted products and services offered by particular pharmaceutical houses.

8. Petitioner's activities included extensive research, interviews, and the collection of data in a particular medical area, then utilized in the production of the educational material.

9. No Federal, state, or city statute regulated the activities or dictated the minimum educational requirements of a graphic designer.

CONCLUSIONS OF LAW

A. That the word "profession" implies attainments in professional knowledge in some department of science or learning and not mere skill and application of knowledge. The performing of services dealing with the conduct of business itself, including the promotion of sales or services of such business, does not constitute the practice of a profession, even though the services involve the

application of specialized knowledge. Although petitioner's activities as a graphic designer require special knowledge and skills, the application and nature of these attributes do not constitute a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Ercole Beltramini, during the years 1972, 1973 and 1974, constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law; thus, the income derived therefrom was subject to unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

C. That the petition of Ercole Beltramini is denied and the Notice of Deficiency issued March 29, 1976 in the sum of \$6,140.39 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER