

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH CAHILL

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~~ :
1961 and 1962.

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 31st day of March, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Joseph Cahill

(~~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 Cahill
156 East 52nd Street
New York, New York 10022

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~~
~~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

31st day of March, 1978.

W. Walker

John Huhn



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

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

March 31, 1978

**Mr. Joseph Cahill
156 East 52nd Street
New York, New York 10022**

Dear Mr. Cahill:

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 ~~(a)~~ **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: ~~Petitioner's Representative~~
~~Commissioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH CAHILL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1961 and 1962.	:	

Petitioner, Joseph Cahill, residing at 156 East 52nd Street, New York, New York 10022, filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961 and 1962 (File No. 01427).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 7, 1977 at 1:15 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether the activities of petitioner during the years 1961 and 1962 constituted the carrying on of an unincorporated business.

II. Whether petitioner had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1961 and 1962.

FINDINGS OF FACT

1. Petitioner, Joseph Cahill, filed New York State resident income tax returns for the years 1961 and 1962. He did not file New York State unincorporated business tax returns for said years.

2. On November 22, 1965, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Joseph Cahill, on the grounds that his activities as a photographer's representative constituted the carrying on of an unincorporated business. It also imposed penalties in accordance with section 685(a) of the Tax Law for said years.

3. Petitioner was a photographer's representative during the years 1961 and 1962 and represented principally "fashion" or "artistic" photographers. He sold their work to advertising agencies or directly to magazines, for which he received commissions. During the years 1961 and 1962, petitioner never represented more than one principal in any one time period.

4. During the years 1961 and 1962, the principals which petitioner represented did not withhold Federal and New York State income taxes or social security taxes from the commissions paid to him. He was free to work for other principals as long as he did not represent conflicting talents. He did not have any written employment contracts with his principals during said years, nor was he covered by his principals under any employee-related plans.

5. Petitioner filed Federal forms 1040, schedule "C", for the years 1961 and 1962 and reported thereon the income from his photographic sales activities. He maintained an office and, on occasion, he hired a secretary. He used his own stationery and was not reimbursed by his principals for his business expenses.

6. Petitioner developed his own leads, set up his own work schedules and had sole control over his activities and techniques in making sales. He was restricted by some of his principals from selling their work to certain magazines or agencies.

7. Petitioner was advised by his accountant that he was not required to file New York State unincorporated business tax returns for 1961 and 1962.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Joseph Cahill, from the photographers he represented and from his photographic sales activities during the years 1961 and 1962, constituted income from his regular business as a photographer's representative. It did not constitute compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner during the years 1961 and 1962 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Joseph Cahill, had reasonable cause for failing to file New York unincorporated business tax returns for the years 1961 and 1962. Therefore, the penalties imposed pursuant to section 685(a) of the Tax Law are cancelled.

D. That the petition of Joseph Cahill is granted to the extent of cancelling the penalties imposed for the years 1961 and 1962; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued on November 22, 1965, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 31, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER