

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JERRY W. MC DANIEL

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~~ :
1969 & 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 13 day of October, 1978, she served the within
Notice of Decision by (certified) mail upon Jerry W. McDaniel

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jerry W. McDaniel
20 Brookside Drive
Greenwich, Connecticut 06830

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

13 day of October, 1978.

Walker

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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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) ~~xxxxxx~~ ~~xxxxxx~~ :
1969 & 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 13 day of October, 1978, she served the within
Notice of Decision by (certified) mail upon Harry Zimmerman,
CPA

(representative of) the petitioner in the within proceeding,


by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harry Zimmerman
41 Union Square West
New York, NY 10003

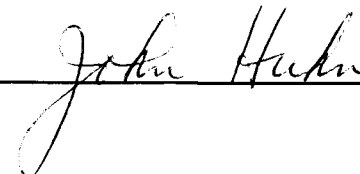
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~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

13 day of October, 1978







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

October 13, 1978

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

Jerry W. McDaniel
20 Brookside Drive
Greenwich, Connecticut 06830

Dear Mr. McDaniel:

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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JERRY W. MC DANIEL

DECISION

for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Years 1969 and 1970.

Petitioner, Jerry W. McDaniel, 20 Brookside Drive, Greenwich, Connecticut 06830, 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 1969 and 1970 (File No. 12718).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 27, 1977 at 9:15 A.M. Petitioner appeared by Harry Zimmerman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner's activities as an illustrator during the years 1969 and 1970 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Jerry W. McDaniel, filed New York State personal income tax returns for 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's income from his activities as a designer during the years 1969 and 1970 was subject to unincorporated business tax. It issued a Statement of Audit Changes dated August 21, 1973, which also included Federal audit changes for 1969. Accordingly, it issued a Notice of Deficiency September 30, 1974 for 1969 and 1970 in the amount of \$871.45 in unincorporated business and personal income tax, plus \$345.72 in penalty and \$195.25 in interest, for a total due of \$1,412.42. Petitioner did not contest the personal income tax due. He had previously paid the amount shown due for personal income tax (plus interest) on March 28, 1974; therefore, the personal income tax adjustment is not at issue.

3. Petitioner received a Bachelor of Fine Arts degree in 1957. During 1969 and 1970 he created paintings and sketches which were used to embellish stories and articles in magazines and periodicals. His work did not involve advertising or other commercial matter. Petitioner's illustrations were used to make stories visually interesting and for other esthetic purposes.

4. More than 80 percent of petitioner's gross income was derived from services performed as an illustrator. Capital was not a material income producing factor.

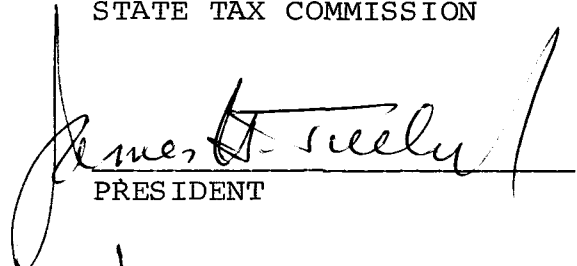
CONCLUSIONS OF LAW

A. That petitioner, Jerry W. McDaniel's activities during 1969 and 1970 constituted the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of Jerry W. McDaniel is granted and the balance of the Notice of Deficiency attributable to unincorporated business tax is cancelled.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER