

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS X. MASCOLA

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)~~ :
1966 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 20th day of September , 19 78 , she served the within

Notice of Decision by (certified) mail upon Francis X. Mascola

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Francis X. Mascola
12 Wheeler Plaza
West Nyack, 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 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 , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS X. MASCOLA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966 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 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon David W. Silverman, Esq.

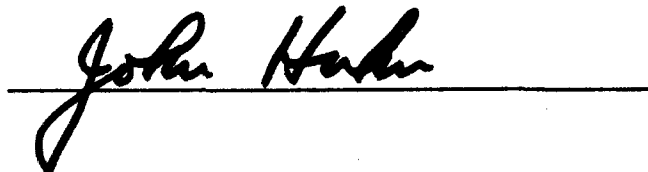
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. David W. Silverman, Esq.
c/o Granik, Garson, Silverman & Nowicki
120 North Main Street
New York, New York 10956
and by depositing same enclosed 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. Francis X. Mascola
12 Wheeler Plaza
West Nyack, New York

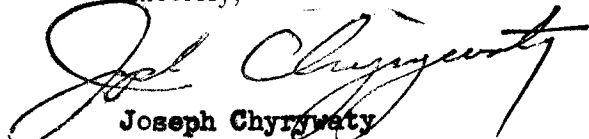
Dear Mr. Mascola:

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 ~~(x)~~ **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 Chyrgwaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANCIS X. MASCOLA	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966, 1967, 1968, 1969 and	:	
1970.	:	

Petitioner, Francis X. Mascola, 12 Wheeler Place, West Nyack, New York 10954, 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 1966, 1967, 1968, 1969 and 1970 (File No. 12239).

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 August 30, 1977 at 2:00 P.M. Petitioner appeared by Irving A. Garson, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner's activities during the years 1966 through 1970 constituted the practice of a profession or the carrying on of an unincorporated business.

II. Whether part of petitioner's income was derived from rendering services as an employee and, therefore, making said income exempt from the imposition of unincorporated business tax.

III. Whether penalty and interest were properly imposed on petitioner for the years at issue and, if so, whether penalty and interest should begin to accrue from the due dates required for filing unincorporated business tax returns for said years.

FINDINGS OF FACT

1. Petitioner filed New York State personal income tax returns for the years 1966 through 1970 on which he listed his occupation as that of management consultant. He reported thereon that his business income was derived from management consulting. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business during the years 1966 through 1970; therefore, a Notice of Deficiency was issued on July 28, 1975 in the amount of \$2,767.58 in unincorporated business tax, plus \$1,297.68 in penalty and \$951.02 in interest, for a total due of \$5,016.28. The amounts of penalty and interest were computed from the due dates of the unincorporated business tax returns to July 28, 1975.

3. Petitioner contended that part of his income was derived from services performed as an employee of Contractors and Suppliers Association of Rockland County, Inc. (hereinafter "CSARC") and that the balance of his income was derived from the practice of a profession in the field of labor relations.

4. Because of his experience and expertise in the field of labor relations, petitioner was engaged by CSARC on a part-time basis at \$330.00 per week. Petitioner simultaneously performed services in the field of labor relations for other principals on an independent fee basis, using the office space provided to him by CSARC. Petitioner did not conduct business from any other office.

5. CSARC was organized by approximately seventy five construction contractors and suppliers, to assist said contractors and suppliers in handling their labor relations, as well as to bargain collectively with labor unions on an industry-wide basis, rather than in an individual manner. CSARC was also interested in generally promoting the construction industry in the area.

6. Petitioner was given the titles of executive secretary and managing director by CSARC. In addition to his labor relations work, petitioner performed duties which included managing the day-to-day business of CSARC and supervising a small office staff.

7. Approximately 55% of the petitioner's income during the years 1966 through 1970 was derived from CSARC and 45% was derived from independent business. Petitioner's business expense deductions were approximately one-third of his total income from both sources.

8. CSARC did not deduct social security taxes or Federal and New York State withholding taxes from petitioner's compensation until the early part of 1970. It was understood that petitioner's independent business would not interfere with CSARC affairs. Petitioner received assignments from CSARC's board of directors and executive committees.

9. Petitioner graduated from Manhattan College with a degree in business administration. He attended graduate school at Cornell University, Marshall College and the School of Industrial and Labor Relations of Columbia University. He had many years of experience in the areas of collective bargaining, labor relations and contract negotiations. He was experienced in arbitration and mediation. He gave lectures, wrote articles and was recognized as an expert in the labor relations field.

10. During the years 1966 through 1970, petitioner primarily represented management as a labor relations consultant in both his private practice and for CSARC. In his independent capacity, he

also performed services for CSARC member companies in labor relations' areas which were above and beyond industry-wide collective bargaining.

11. Petitioner relied on his accountant for proper filing of his tax returns.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Francis X. Mascola, in the field of labor relations during the years 1966 through 1970, constituted the performance of services dealing with the conduct of his principal's business and that, such consultation services (although requiring the application of specialized knowledge) did not constitute the practice of a profession in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the services performed by petitioner, Francis X. Mascola, during the years 1966 through 1970 for Contractors and Suppliers Association of Rockland County, Inc., whether or not as an employee, were not performed independently of his other business activities, and that said services, were so interrelated as to constitute part of the business in which he was regularly engaged, in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the aforesaid activities of and services rendered by petitioner, Francis X. Mascola, during said years constituted the carrying on of an unincorporated business; thus, his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

D. That petitioner, Francis X. Mascola's, failure to file unincorporated business tax returns for the years at issue was due to reasonable cause and not due to willful neglect... Therefore, all penalties are cancelled.

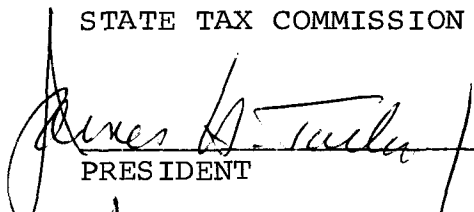
E. That interest was properly applied and accruable as of the due dates of the returns pursuant to section 684 of the Tax Law.

F. That the petition of Francis X. Mascola is granted to the extent that all penalties are cancelled. The Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued July 28, 1975, and that, except as so granted, the petition is in all other respects denied.

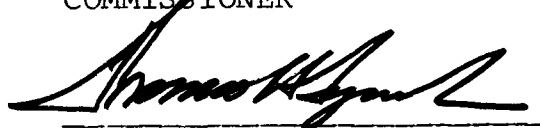
DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER