

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN SAGAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (XX 23 of the :
Tax Law for the Year(s) ~~XXXX Period(s)~~ :
1966 & 1967

State of New York
County of Albany

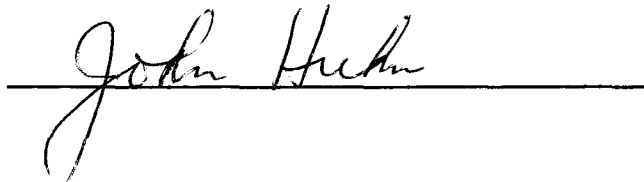
John Huhn , being duly sworn, deposes and says that
~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of October , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon John Sagan
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John Sagan
17 Rockland Avenue
Yonkers, 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)~~
~~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

13th day of October , 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

October 13, 1978

John Sagan
17 Rockland Avenue
Yonkers, New York

Dear Mr. Sagan:

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 ~~65~~ **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~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN SAGAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966 and 1967.	:	

Petitioner, John Sagan, 17 Rockland Avenue, Yonkers, New York, 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 and 1967 (File No. 00575).

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 29, 1977 at 2:45 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the activities of petitioner during 1966 and 1967 constituted the carrying on of a profession and, thus, were exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, John Sagan, filed a New York State income tax resident return for 1966 and 1967, wherein he reported net business income derived from his activities as a free-lance artist. Unincorporated business tax returns were not filed for said years.

2. The Income Tax Bureau contended that John Sagan's activities constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. Accordingly on November 30, 1970, it issued a Notice of Deficiency against petitioner for 1966 and 1967, asserting unincorporated business tax of \$222.45, plus penalty of \$55.61 (pursuant to section 685(a) of the Tax Law) and interest of \$46.35.

3. Petitioner was a free-lance artist and was primarily involved in the field of package design. His activities included creating designs used in corporate brochures, posters, sales literature, and other promotional material, all of which were normally utilized to promote the sale of a product.

4. Although petitioner attended several art schools, he never obtained an art degree.

5. There were no Federal, state or city statutes regulating the activities or dictating the minimum educational requirements of a free-lance artist.

CONCLUSIONS OF LAW

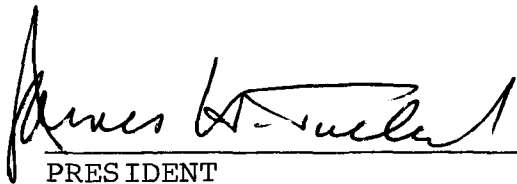
A. That the word "profession" implies attainments in professional knowledge in some department of science or learning and not mere skill and application of knowledge. Performing services which deal with the conduct of business itself (including the promotion of sales or services of such business) does not constitute the practice of a profession, even though the services involve the application of a specialized knowledge. Although petitioner's activities as a free-lance artist 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 aforementioned activities of petitioner, John Sagan, during 1966 and 1967 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.

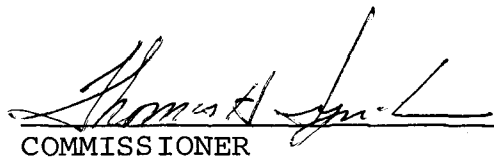
C. That the petition of John Sagan is denied and the Notice of Deficiency issued November 30, 1970 in the sum of \$324.41 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

to.....Secretary to the State Tax Commission

Decision Mailed

11/3/78

M-75 (5/76)

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227



CLAIM CHECK NO.

☐ HOLD

DATE

6 16 78

1ST NOTICE


2ND NOTICE

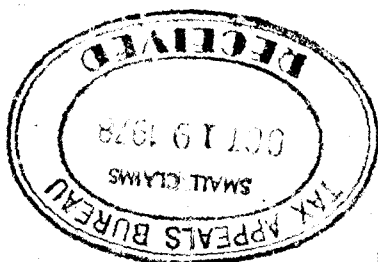
RETURN

Discontinued from
PS Form 3800-A
May 1977

John Sagan
17 Rockland Avenue
Yonkers, New York




RETURNED TO SENDER
REASON CHECKED
Unclaimed _____
Addressee unknown _____
Insufficient address _____
No such street _____
No such office in street _____
Do not re-mail in this envelope



86/78

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STATE TAX COMMISSION

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Box 249 Old Stone Hill Road
Pound Ridge, New York 10576
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Sworn to before me this

3rd day of November , 19 78

M. Walker

John Huhn