

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LUIS A. SANGUINO

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 ~~(or Period)~~ :
1969

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 13 day of October , 1978, he served the within
Notice of Decision by ~~(certified)~~ mail upon Luis A. Sanguino

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Luis A. Sanguino
Matalpino
Madrid, Spain

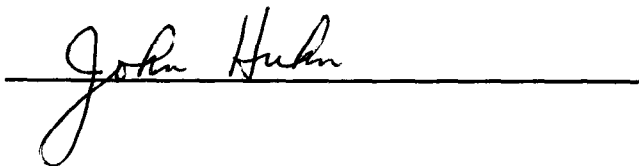
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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





STATE OF NEW YORK
STATE TAX COMMISSION

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of
LUIS A. SANGUINO

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For a Redetermination of a Deficiency or :
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State of New York
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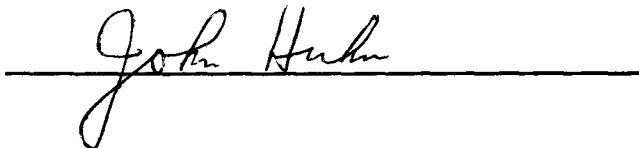
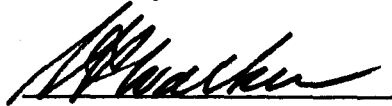
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of October, 1978, she served the within
Notice of Decision by (certified) mail upon Wallace Magaziner,
Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Wallace Magaziner, Esq.
595 Madison Avenue
Apt. 1A
New York, NY 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
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.





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

Luis A. Sanguino
Matalpine
Madrid, Spain

Dear Mr. Sanguino:

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 **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 Chynoweth
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

LUIS A. SANGUINO

DECISION

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

Petitioner, Luis A. Sanguino, Matalpino, Madrid, Spain,
filed a petition for redetermination of a deficiency or for
refund of unincorporated business tax under Article 23 of the
Tax Law for the year 1969 (File No. 00222).

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 29,
1977 at 2:45 P.M. Petitioner appeared by Wallace Magaziner, Esq.
The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza
Schwadron, Esq., of counsel).

ISSUE

Whether the income derived by petitioner from his activities
as a sculptor was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Luis A. Sanguino, timely filed a New York State personal income tax return for the year 1969 in which he indicated his occupation to be that of sculptor. He did not file an unincorporated business tax return for said year.

2. Petitioner had filed an unincorporated business tax return for the prior year 1968. He contended, however, that it was filed through ignorance of the law and that he had been unaware that artists were not subject to unincorporated business tax. He did not file a refund request for 1968 because he believed that the small amount of tax paid did not warrant his doing so.

3. The Income Tax Bureau contended that petitioner's income was derived from the carrying on of an unincorporated business. A Notice of Deficiency was issued September 25, 1972 for the year 1969 in the amount of \$392.66 in unincorporated business tax, plus \$147.25 in penalty and \$57.58 in interest, for a total due of \$597.49.

4. Petitioner was born in Barcelona, Spain, in 1934. He studied at the School of Fine Arts in Cadiz and at the Royal Academy in Madrid. At an early age, petitioner was a well-known sculptor throughout Europe. Petitioner came to the United States in 1957 and became a well-known sculptor here, as well. He was a

Fellow of the National Sculpture Society of New York and received many important international awards and commissions. During 1969 petitioner held "one-man" shows at the Palm Beach Galleries in Florida and also at the Hammer Galleries in New York, the latter being one of the most prestigious art galleries in the United States.

5. All of petitioner's gross income was derived from the sale of the works of art which he created. Capital was not a material income-producing factor.

6. Petitioner did some works in wood, granite and bronze. However, he worked principally in marble. Petitioner would first develop an idea for a statue or monument. He then made a drawing and selected a piece of marble at a quarry. Under his direction, his assistants roughed out the statue. At this point, any flaws or objectional stains could be detected and the marble rejected. Petitioner would then complete the work himself at his studio in Spain or in New York.

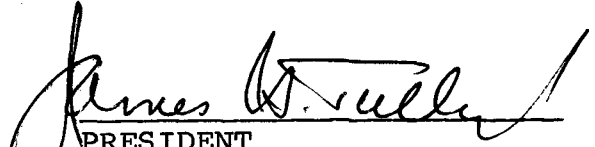
CONCLUSIONS OF LAW


A. That the income derived by petitioner, Luis A. Sanguino, from his activities as a sculptor 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.

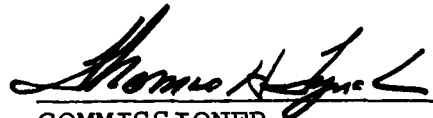
B. That the petition of Luis A. Sanguino is granted and the Notice of Deficiency dated September 25, 1972 in the amount of \$597.49 is cancelled.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER