

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

VICTOR BORGE

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) 16 & 16-A of the :
Tax Law for the Year(s) ~~and Period(s)~~ 1955 :
through 1959.

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 14th day of February , 1979 , he served the within
Notice of Determination by ~~certified~~ mail upon Victor Borge

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Victor Borge
c/o J.H. Cohn & Company
810 Broad Street
Newark, NJ 07102

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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

VICTOR BORGE

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) 16 & 16-A of the :
Tax Law for the Year(s) ~~xxxPeriod(s)~~ 1955 :
through 1959.

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 14th day of February , 1979 , she served the within
Notice of Determination by ~~(certified)~~ mail upon Hill M. Lalin, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Hill M. Lalin, CPA
as follows: J.H. Cohn & Company
810 Broad Street
Newark, NJ 07102

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

14th day of February , 1979.

Marilyn J. Lapineau

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

February 14, 1979

Victor Borge
a/o J.H. Cohn & Company
810 Broad Street
Newark, NJ 07102

Dear Mr. Borge:

Please take notice of the **determination**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **375 & 386(j)** 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 **90 days** 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,

Michael Alexander
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
VICTOR BORGE	:	DETERMINATION
for Revision or Refund of Personal Income :		
Taxes or Unincorporated Business Taxes		
under Articles 16 and 16-A of the Tax Law :		
for the Years 1955 through 1959.	:	

Applicant, Victor Borge, c/o J. H. Cohn & Company, 810 Broad Street, Newark, New Jersey 07102, filed applications for revision or refund of personal income taxes or unincorporated business taxes under Articles 16 and 16-A of the Tax Law for the years 1955 through 1959 (File No. 00475).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1977 at 2:45 P.M. Applicant appeared by J. H. Cohn & Company, Accountants (Hill M. Lalin, CPA). The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether applicant was entitled to offset losses incurred in the operation of a poultry farm, with a situs in the State of Connecticut, against New York business income received as a professional entertainer.

II. Whether the net income derived from applicant's activities as a professional entertainer was properly determined.

III. Whether applicant's activities as a professional entertainer constituted the practice of a profession within the meaning and intent of section 386 of the Tax Law.

IV. Whether the Income Tax Bureau was precluded by the Statute of Limitations from assessing personal income taxes and unincorporated business taxes for the years 1955 through 1959.

FINDINGS OF FACT

1. Applicant, Victor Borge, and his wife were nonresidents of New York State during the years 1955 through 1959, inclusive.

2. On April 30, 1968 as a result of an audit, the Income Tax Bureau issued a Notice of Additional Assessment for said years, asserting normal tax of \$15,150.38 and unincorporated business tax, penalty and interest of \$10,148.71 for a total of \$25,299.09.

3. Applicant signed a "Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes" for the years 1956 through 1964, extending, until April 15, 1969, the period within which tax could be assessed. The assessment for 1955 was based on Federal audit changes. Applicant failed to notify the Tax Commission of such Federal audit changes as required by section 367 of the Tax Law.

4. In April of 1952, applicant, Victor Borge, purchased a poultry farm located in Connecticut. From 1955 until March of 1959, he operated his farm as a sole proprietorship, incurring losses in the operation thereof. During this period, applicant deducted these losses as a business expense. With the exception

of 1955, in which year a deduction of \$16,666.67 was allowed, the Income Tax Bureau disallowed all such deductions on the rationale that the farm conducted no business in New York. Although he argues to the contrary, applicant has submitted no proof that the farm did in fact carry on any part of its business in New York.

5. The Income Tax Bureau computed the deductions relating to applicant's theatrical production income as follows:

New York Theatrical Income		Total Expenses Incurred
<hr/>	X	in the Production of
Total Theatrical Income		Theatrical Income

Applicant argues that certain expenses were incurred specifically in the production of New York theatrical income and that these expenses should not be subjected to the above pro rata formula. Applicant has submitted no proof of any expenses incurred specifically in the production of New York theatrical income.

6. The Income Tax Bureau has treated some of applicant's activities in the field of entertainment as being subject to unincorporated business tax. In February of 1959, applicant formed a unitary business which combined the activities of his poultry farm and his entertainment activities under the name Danica Enterprises, Inc. As determined by the United States Tax Court in Borge v. Commissioner, 69-1 USTC, applicant owned 100% of the stock in Danica Enterprises, Inc. It was found by the Tax Court that he received \$75,000.00 per year, allegedly as a salary, and that the poultry farm and entertainment activities of applicant continued with no relevant change. The Income Tax Bureau computed the portion of this \$75,000.00 which was attributable to New York as follows:

New York Theatrical Income		\$75,000.00
<hr/>	X	
Total Theatrical Income		

Although he argues that the Income Tax Bureau did not properly determine the amount of his income (prior to the formation of Danica Enterprises, Inc.) which is properly attributable to New York, and further argues that the above-cited formula does not accurately reflect the amount of his income from Danica Enterprises, Inc. properly attributable to New York, applicant has submitted no proof of any specific earnings attributable to either New York or non-New York sources.

7. The Income Tax Bureau treated the income resulting from applicant's New York activities in the field of entertainment as being subject to unincorporated business tax. Applicant argues that his New York activities in the field of entertainment were not subject to unincorporated business tax.

8. Applicant, Victor Borge, relied on the advice of his accountant and at all times acted in good faith.

CONCLUSIONS OF LAW

A. That the losses incurred in the operation of applicant's poultry farm in the State of Connecticut were derived from non-New York State sources and were not deductible within the meaning and intent of section 359 of the Tax Law.

B. That since applicant failed to report Federal audit changes for 1955 as required by section 367 of the Tax Law, the amount of tax due may be assessed at any time under section 373.1 of the Tax Law and the assessment for 1955 was timely.

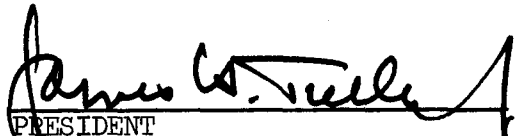
C. That the Income Tax Bureau is not precluded by the Statute of Limitations from issuing an assessment when a bona fide "Consent" to extend such statute has been agreed to (section 373.5 of the Tax Law). Accordingly, the assessments for the years 1956 through 1960 were timely.


D. That the activities of applicant, Victor Borge, as a professional entertainer, constituted the practice of a profession within the meaning and intent of section 386 of the Tax Law and that the income which he derived from said activities was not subject to unincorporated business tax.

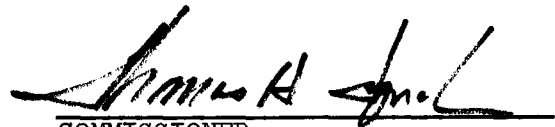
E. That the applications of Victor Borge are granted to the extent of cancelling the unincorporated business tax, penalty and interest due for the years 1955 thru 1959; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Additional Assessment issued April 30, 1968 but that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER