

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ray Caram :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Unincorporated Business Tax :

under Article 23 of the Tax Law

for the Years 1970 - 1975. :

State of New York

County of Albany

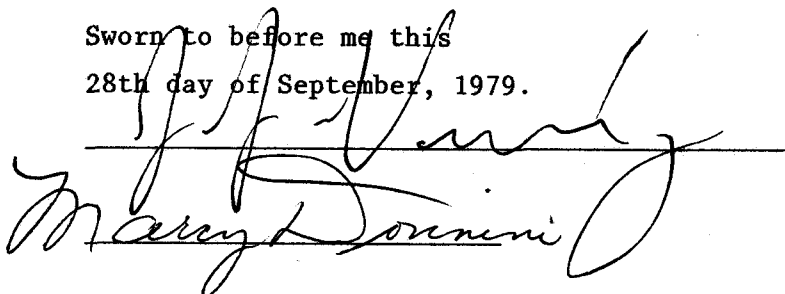
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Ray Caram, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ray Caram
111 Pennsylvania Ave.
Yonkers, NY 10707

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.


Mary J. Donini

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Ray Caram
111 Pennsylvania Ave.
Yonkers, NY 10707

Dear Mr. Caram:

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(s) 690 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,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RAY CARAM
for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law
for the Years 1970, 1971, 1972, 1973,
1974 and 1975.

DECISION

Petitioner, Ray Caram, 111 Pennsylvania Avenue, Yonkers, New York 10707, 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 1970 through 1975 (File Nos. 16770 and 21452).

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 October 26, 1978 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner's activities as an artist during the years 1970 through 1975 constituted the practice of a profession which was exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Ray Caram, filed New York State personal income tax returns for the years 1970 through 1975. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities as an artist constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax.

Accordingly, it issued a Notice of Deficiency against him on September 27, 1976 for 1970, 1971, and 1972 in the amount of \$1,674.02 in unincorporated business tax, plus \$770.31 in penalty and \$463.17 in interest, for a total due of \$2,907.50. On January 30, 1978, the Income Tax Bureau issued a second Notice of Deficiency asserting \$1,415.82 in unincorporated business tax for 1973, 1974 and 1975, plus penalty and interest, and \$293.17 in personal income tax for 1975, plus interest. The personal income tax portion of this second Notice of Deficiency is not at issue.

3. During the years at issue, petitioner was a self-employed artist. His income was derived from art work executed for two studios which dealt with the art needs of business concerns. The studios told him what to paint or sketch, and at times, for what business purpose the art work was needed. Petitioner worked with oil paints, pencil, chalks, acrylics and water colors. He retained ownership of the original work, and sold only the right to reproduce the original and to use the reproductions for any purpose that the studio's clients desired. Petitioner set the price for each item according to what he believed was its value to the studio, and whether or not it was accepted by the studio's client. He was compensated by the studio whether or not the client accepted the art work.

4. Petitioner's art work was business-oriented. It consisted of annual reports to stockholders, "idea work" for product development and packaging, "slide work" showing graphs and other information for sales meetings, and pictures used internally by business concerns. Petitioner contended that he did not know whether or not part of his work was used for advertising purposes.

5. Petitioner conceded that part of his work was commercial in nature; however, he contended that part of his work was fine arts. He did not submit substantial or any satisfactory evidence to support his contention.

6. Petitioner did not offer evidence regarding his educational background in the field of art, or regarding any recognition of his accomplishments in said field during the years at issue.

CONCLUSIONS OF LAW

A. That although petitioner's activities as an artist required special knowledge and skill, the application and nature of these attributes did not constitute the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law; moreover, petitioner did not sustain the burden of proof established by sections 689(e) and 722 of the Tax Law, which requires him to show that any identifiable part of his income was derived from art other than commercial art.

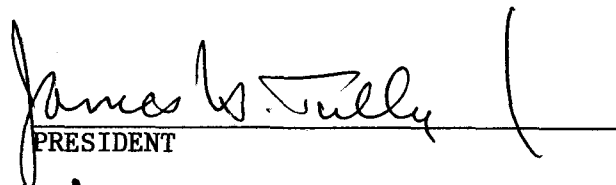
B. That the aforementioned activities during the years 1970 through 1975 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law; consequently, the income derived therefrom was subject to unincorporated business tax under section 701 of the Tax Law.

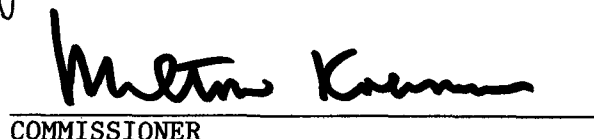
C. That the petition of Ray Caram is denied and the notices of deficiency issued September 27, 1976 and January 30, 1978 are sustained.

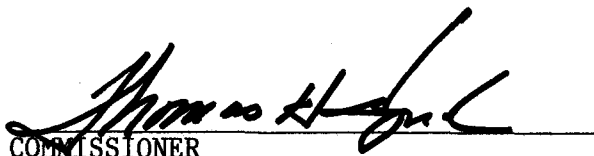
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER