

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 9, 1979

Whitney I. Gerard  
940 Park Ave.  
New York, NY 10028

Dear Mr. Whitney:

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) 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Whitney I. Gerard :

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 Year 1972. :

State of New York

County of Albany

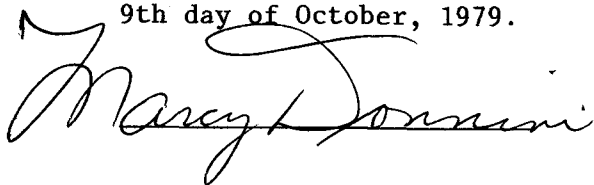
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Whitney I. Gerard, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

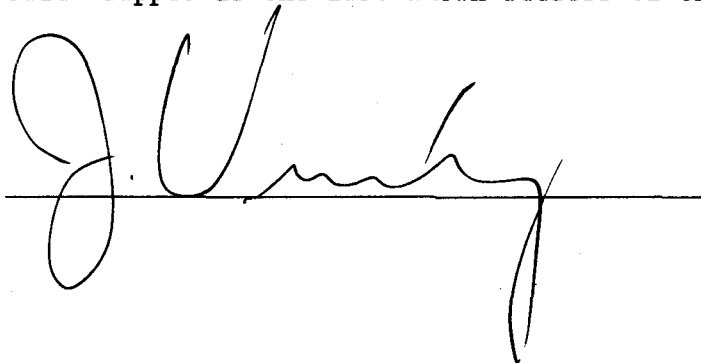
Whitney I. Gerard  
940 Park Ave.  
New York, NY 10028

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  
9th day of October, 1979.

  
Nancy Dominici

  
Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
WHITNEY I. GERARD	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Year 1972.	:	

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Petitioner, Whitney I. Gerard, 940 Park Avenue, New York, New York 10028, 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 1972 (File No. 15950).

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 November 3, 1978 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities as a wine consultant were subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Whitney I. Gerard, timely filed a New York State income tax resident return for 1972, on which he reported income of \$16,074.91 from his activities as a wine consultant. He did not file an unincorporated business tax return for said year.

2. On May 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1972, asserting unincorporated business tax of \$432.30, penalty (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) of \$179.41 and interest of \$100.73, for a sum of \$712.44.

3. Petitioner was an attorney and a full-time partner in the law firm of Alexander and Green, which was located in New York City. Petitioner was also a connoisseur of food and wine, and was employed on a part-time basis as a wine and legal consultant by S. S. Pierce Company.

4. On April 17, 1971, petitioner entered into a "letter agreement" with A. de Luze et Fils, of Bordeaux, France, in which petitioner agreed to locate an importer in the United States, to enable said firm to distribute its wine. The written agreement provided, in part, that petitioner would be paid \$15,000.00 in three installments over a three-year period. He would receive a commission which was based on a percentage of the distribution. Said commission would increase as a result of petitioner's having located a new importer. He would also monitor and supervise the importer's activities in promoting and selling de Luze wines, and he would convey to the importer his own observations and recommendations.

5. Petitioner contended that the compensation which he received in accordance with the agreement of April 17, 1971 represented a "finder's fee" for finding a United States importer, and that during 1972 he rendered no services for A. de Luze et Fils.

6. A letter submitted by the president and general director of A. de Luze et Fils stated, in part, as follows:

However, I can certainly state that your only service to us in this regard was as a finder. You were not our agent in any commercial sense, only a long standing friend of the company, and you did not engage in or supervise any sales or promotional activities for us or for Shaw-Ross Ltd. (the importer).

The letter also indicated that the written agreement provided that petitioner render certain duties (Finding of Fact "4") "...in order to make the stockholders content, if they ever inquired."

7. Prior and subsequent to April 17, 1971, petitioner was not engaged in any activity which involved finding United States companies to distribute and/or sell foreign products.

CONCLUSIONS OF LAW

A. That petitioner, Whitney I. Gerard, was not carrying on an unincorporated business during 1972; that the income he received as a finder's fee resulted from an isolated transaction which lacked continuity, frequency and regularity of activity; accordingly, it did not constitute an unincorporated business, in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the petition of Whitney I. Gerard is granted and the Notice of Deficiency issued May 24, 1976 for 1972 is cancelled.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER