

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

October 9, 1979

Ira Levy
737 Park Ave.
New York, NY

Dear Mr. Levy:

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
Jack M. Bernstein
Bernstein, Rose & Co.
310 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ira Levy :

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 1967 - 1972. :

State of New York

County of Albany

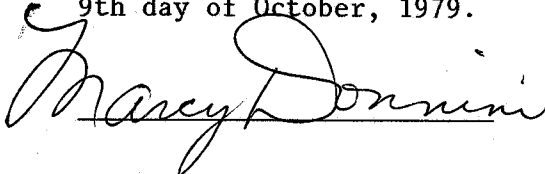
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Ira Levy, the petitioner in the within proceeding, by enclosing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

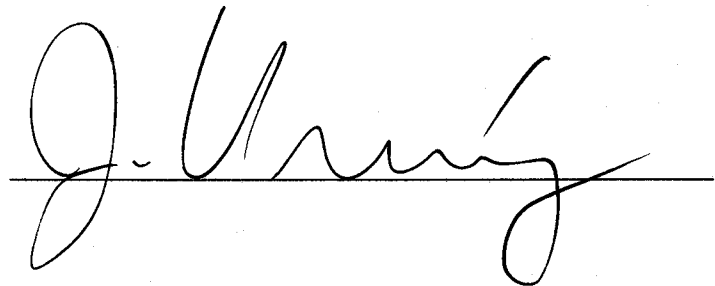
Ira Levy
737 Park Ave.
New York, NY

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 L. Donini


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ira Levy :

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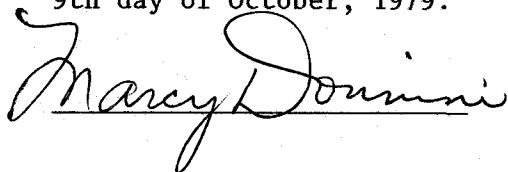
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Jack M. Bernstein the representative of the petitioner in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

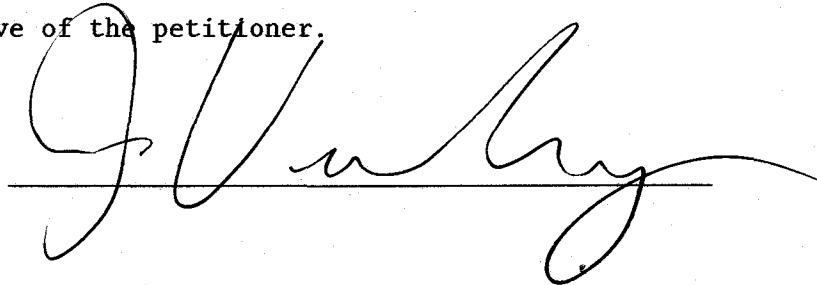
Mr. Jack M. Bernstein
Bernstein, Rose & Co.
310 Madison Ave.
New York, NY 10017

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
9th day of October, 1979.


Nancy Donini


Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
IRA LEVY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1967,	:	
1968, 1969, 1970, 1971 and 1972.	:	

Petitioner, Ira Levy, 737 Park Avenue, New York, New York, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967 through 1972 (File No. 12687).

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 January 10, 1978 at 9:45 A.M. Petitioner appeared by Jack M. Bernstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of Counsel).

ISSUE

Whether petitioner's activities as a package designer constituted the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Ira Levy, filed New York State income tax resident returns for the years 1967 through 1972, on which he reported net business income from his activities as a design consultant. He did not file unincorporated business tax returns for said years on the advice of his accountant.

2. The Income Tax Bureau issued three notices of deficiency against petitioner for the years 1967 through 1972, whereby it held that the income derived from petitioner's activities as a design consultant was subject to unincorporated business tax. Penalties were imposed pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law. Adjustments were also made as a result of a change in petitioner's Federal taxable income for 1970 (pursuant to section 659 of the Tax Law), said adjustments being conceded to by petitioner.

3. Petitioner was a self-employed designer and design consultant specializing in package design for the cosmetics industry. His designs were instrumental in promoting sales of various products.

4. Petitioner was regarded as an industrial design engineer by many of his clients, despite the fact that he never received any type of formal education in this field and had attained his specialized knowledge and skills through self-study.

5. Petitioner had established himself as a designer within the packaging industry, insofar as he was frequently called on to deliver speeches, lectures, and seminars to various firms directly or indirectly involved in package designing.

6. Petitioner was a member of the Committee on Publications at the Museum of Modern Art.

7. Petitioner frequently used the services of subcontractors to aid him in his business activities. No evidence was submitted regarding the extent of the services rendered by the subcontractors, or the percentage of gross income derived from their personal services.

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. The performance of services dealing with the conduct of business itself, including the promotion of sales or services of such business and consulting services, 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 package designer and consultant required special knowledge and skill, the application and nature of these characteristics did not constitute the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Ira Levy, during the years 1967 through 1972, 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 the imposition of unincorporated business tax, in accordance with the meaning and intent of section 701 of the Tax Law.

C. That the petitions of Ira Levy are granted to the extent that the penalties imposed in accordance with sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law are cancelled, due to reasonable cause.

D. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued November 25, 1974 for 1967, 1968 and 1969, and the Notice of Deficiency issued January 27, 1975 for 1971 and 1972, to the extent shown in Conclusion of Law "C"; that the Notice

of Deficiency issued November 25, 1974 for 1970 is sustained; that the tax owing for all years shall be due together with such interest as may be lawfully owing; and that, except as so granted, the petitions are in all other respects denied.

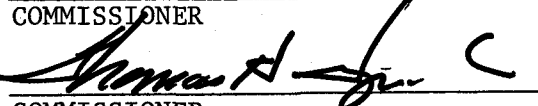
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER