

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

John L. Moore :

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 November, 1979, he served the within notice of Decision by certified mail upon John L. Moore, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John L. Moore  
6 Woodridge Rd.  
Delmar, NY 12054

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 November, 1979.

Joanne Knapp

J. Vredenburg

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

November 9, 1979

John L. Moore  
6 Woodridge Rd.  
Delmar, NY 12054

Dear Mr. Moore:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOHN L. MOORE : 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, John L. Moore, 6 Woodridge Road, Delmar, New York 12054, 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. 12266).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 20, 1978 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner's activities as graphic designer during the year 1972 constituted the carrying on of a profession exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, John L. Moore, filed New York State income tax return for 1972, on which he stated his occupation to be that of a "Graphic Artist." Petitioner did not file an unincorporated business tax return.

2. On January 9, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, John L. Moore, imposing unincorporated business tax of \$96.56, plus interest. On October 27, 1975, the Income Tax Bureau issued a Notice of Deficiency on the grounds that his activities as a graphic artist constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax.



3. Petitioner is a self-employed graphic arts designer doing business under the name of John Moore Graphic Design in Delmar, New York.

4. Petitioner does not hold a degree, but received two years training at the Art Center School in Los Angeles and another year in Kunstyewerbeschule of Zurich, Switzerland.

5. Petitioner's activities involved the creation of brochures and pamphlets used in reports or presentations for governmental bodies. He helped his clients determine the nature of readership or audience and advise on cost, format, medium and technique. Petitioner created graphics, diagrams, drawings, maps and other visual materials needed for the presentation. His services also included preparation of specifications on bids for typesetting, printing and exhibit construction. He also advised clients on the awarding of contracts on said bid.

6. Petitioner's clients are primarily all in the public sector and are mainly New York State agencies. It is the contention of petitioner that his activities are not subject to unincorporated business tax since capital is not an income producing factor and his work is not for the promotion of sales in the business sector.

#### CONCLUSIONS OF LAW

A. That the word "profession" implies attainment in professional knowledge in some department of science or learning and not mere skill and application of knowledge. The performing of services dealing with the conduct of governmental business itself, includes the understanding of services rendered by such agencies. It does not constitute the practice of a profession, even though the services involve the application of specialized knowledge. Although petitioner's activities as a graphic designer require special knowledge and skills, the applications and nature of these attributes do not constitute a profession within the meaning and intent of section 703(c) of the Tax Law.



B. That the aforesaid activities of petitioner, John L. Moore, during 1972, constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law. The income derived therefrom was subject to unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

C. That the petition of John L. Moore is denied and the Notice of Deficiency issued October 27, 1975, in the amount of \$96.56 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

NOV 9 1979