

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MIA NOVAK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (X) 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ (s) :
1965 through 1969

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of January , 1979 , ~~she~~ he served the within
Notice of Decision by (certified) mail upon Mia Novak

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mia Novak
3 East 69th Street
New York, NY 10021

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

24th day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :
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of Unincorporated Business :
Taxes under Article (X) 23 of the :
Tax Law for the Year(s) ~~1965 through 1969~~ :
1965 through 1969

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 24th day of January , 1979 , he served the within
Notice of Decision by (certified) mail upon Robert Jacobs, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert Jacobs, Esq.
c/o Milgrim, Thomajan & Jacobs
25 Broadway
New York, NY 10004
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

24th day of January , 19 79.

Marilyn J. Papineau

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

January 24, 1979

Mia Novak
3 East 69th Street
New York, NY 10021


Dear Ms. Novak:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(1) 222 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 **four 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,


Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MIA NOVAK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965 through 1969.	:	

Petitioner, Mia Novak, 3 East 69th Street, New York, New York 10021, 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 1965 through 1969 (File No. 00217).

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 November 15, 1977 at 1:15 P.M. Petitioner appeared by Robert Jacobs, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a fashion illustrator from 1965 through 1969 constitutes the carrying on of an unincorporated business.

II. Whether penalties asserted against petitioner pursuant to sections 685(a) and 685(a)(1) and (2) of the Tax Law, for failure to file unincorporated business tax returns, were proper.

FINDINGS OF FACT

1. Petitioner, Mia Novak, filed New York State personal income tax returns for the years 1965 through 1969. On said returns, she designated her occupation to be that of a fashion artist and reported all income as business income. Petitioner did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities constituted the carrying on of an unincorporated business. On June 28, 1971, it issued a Notice of Deficiency for 1965, 1966 and 1967, asserting unincorporated business tax of \$840.98, plus penalty of \$210.24 and interest of \$225.30, for a total of \$1,276.52. Another Notice of Deficiency was issued on April 13, 1973 for 1968 and 1969, asserting unincorporated business tax of \$958.32, plus penalty of \$319.80 and interest of \$198.66, for a total of \$1,476.78.

3. Petitioner performed services as a fashion illustrator for the McCall Pattern Company (hereinafter "McCall") during the years at issue. She was paid on a piece-work basis and was usually compensated twice a month for approved work completed. She determined her own working hours and worked at a studio that she maintained in her home. McCall would send her a folder by messenger which contained whatever was required to enable petitioner to illustrate a page that would become part of a catalogue. There were instructions as to every detail, so that petitioner could not

use her own discretion. If further instructions were required, petitioner would telephone McCall's art director. The final product was a page showing figures dressed in garments, for which McCall sold the patterns. Petitioner was required to complete the illustrations within a specified time.

4. Petitioner was not issued a withholding tax statement by her principal, nor were income taxes or social security withheld from her compensation. She used her own art materials and, at times, hired fashion models. She was not reimbursed for any expenses incurred in the performance of her services for McCall.

5. Petitioner filed Federal Schedule "C" for the years at issue, in order to show the expenses deducted from gross income.

6. The only control and direction exerted over petitioner's activities by her principal was with respect to the result to be accomplished by her.

7. Petitioner's accountants prepared her income tax returns for the years at issue. She relied on their advice in not filing unincorporated business tax returns.

CONCLUSIONS OF LAW

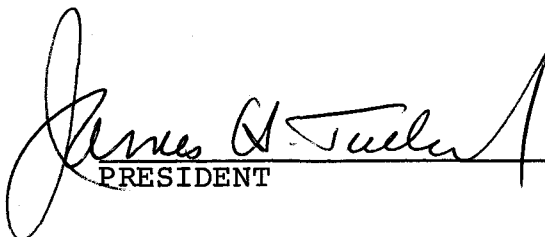
A. That the activities of petitioner, Mia Novak, as a fashion illustrator from 1965 through 1969 constituted the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703 of the Tax Law.


B. That petitioner acted in good faith and, therefore, all penalties are cancelled.

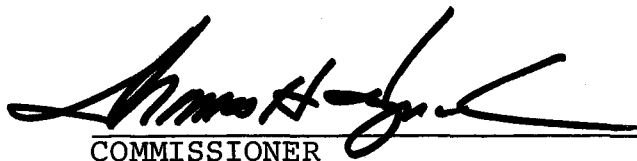
C. That the petition of Mia Novak is granted to the extent of cancelling all penalties asserted against her; that the Income Tax Bureau is hereby directed to so modify the notices of deficiency issued June 28, 1971 and April 13, 1973 but that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER