

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

October 9, 1979

Don L. Passante
2 Marcotte La.
Tenafly, NJ 07670

Dear Mr. Passante:

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
Hyman Wolfson
637 Michelle Pl.
N. Woodmere, NY 11581
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Don L. Passante :

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 1971, 1972. :

State of New York

County of Albany

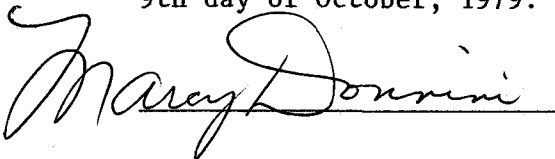
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Don L. Passante, the petitioner in the within proceeding,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

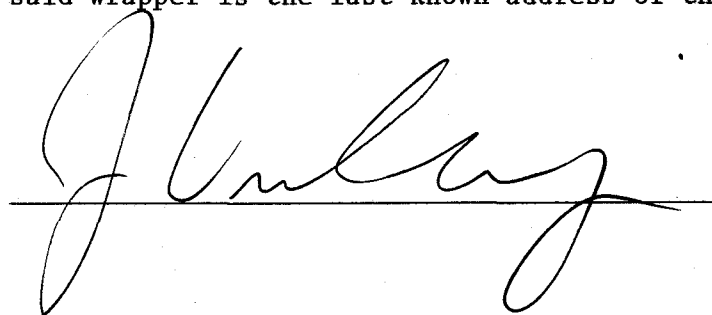
Don L. Passante
2 Marcotte La.
Tenafly, NJ 07670

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.


Mary L. Donrini


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Don L. Passante :

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 1971, 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 Hyman Wolfson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

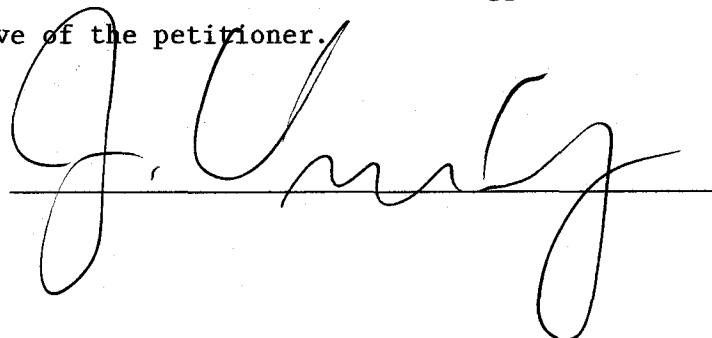
Mr. Hyman Wolfson
637 Michelle Pl.
N. Woodmere, NY 11581

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.


Mary Donini


Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DON L. PASSANTE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1971 and 1972.	:	

Petitioner, Don L. Passante, 2 Marcotte Lane, Tenafly, New Jersey 07670, 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 1971 and 1972 (File No. 15087).

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 December 1, 1978 at 9:15 A.M. Petitioner appeared by Hyman Wolfson, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner's activities as a corporate employee during 1971 and 1972 were so interrelated and integrated with his unincorporated business activities, that the compensation which he received as a corporate employee was includible in his unincorporated business income.

FINDINGS OF FACT

1. Petitioner, Don L. Passante, filed New York State unincorporated business tax returns for 1971 and 1972, on which he reported business income derived by him from his activities as a sole proprietor.

2. On January 15, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1971 and 1972. Said Statement imposed additional unincorporated business tax on the grounds that wage income received by him from D.L. Passante Associates, Inc. was subject to said tax because his activities as a corporate employee were so integrated and interrelated with the activities of his business, that it constituted part of a business regularly carried on by him. Accordingly, on March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting \$1,888.14 in unincorporated business tax, plus \$433.15 in interest, for a total due of \$2,321.29.

3. Petitioner contended that his activities as a corporate employee were separate and distinct from his activities as a sole proprietor. As a corporate employee, he directed employees in the management of the corporation's business of media advertising, which was directed to the Spanish-speaking population. As a sole proprietor, he acted as an individual in matters involving public relations. He stated that it was difficult to determine at what point he was an advertising man and at what point he was a public relations man, because he represented the same and/or similar clients

in his corporation's activities, as he did as a sole proprietor, with all activities being directed to the same audience.

4. The corporation and the business operated from the same office. The office lease was in the corporation's name and the corporation paid all office expenses and employees' salaries. The same telephone served both entities. For 1971 the corporation and the sole proprietorship reported their activities to be that of television and radio producers on their respective franchise and unincorporated business tax returns. For 1972, both businesses reported their activities as that of television and theatre advertising.

5. Petitioner was president of the corporation and he directed its activities. He owned all of its stock and was paid wages from the corporation of \$18,000.00 during each of the years at issue. His net profit from the business was \$43,604.50 in 1971 and \$42,723.60 in 1972. There was no division of his time between the corporation and the business.

CONCLUSIONS OF LAW

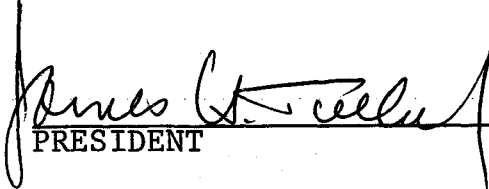
A. That the services performed by petitioner, Don L. Passante, during 1971 and 1972 as an employee of D.L. Passante Associates, Inc., were rendered in the furtherance and for the direct benefit of his unincorporated business. Said services were interrelated and integrated so as to constitute part of a business regularly carried on by him. The wage income received by him as an employee of said corporation was includible in his unincorporated business income, in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the petition of Don L. Passante is denied and the Notice of Deficiency issued on March 29, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER