

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

October 9, 1979

Patricia L. Sabena
34-11 84th St.
Jackson Heights, NY 11372

Dear Ms. Sabena:

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

Patricia L. Sabena :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax & UBT :

under Article 22 & 23 of the Tax Law

for the Years 1970 - 1973. :

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 Patricia L. Sabena, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Patricia L. Sabena

34-11 84th St.

Jackson Heights, NY 11372

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.

Marcy Dominici

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PATRICIA L. SABENA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1970, 1971, 1972 and 1973.	:	

Petitioner, Patricia L. Sabena, 34-11 84th Street, Jackson Heights, Long Island, New York 11372, 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 1970, 1971, 1972 and 1973 (File Nos. 20028 and 12350).

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 1, 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 constituted the practice of a profession which was exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Patricia L. Sabena, and Robert Sabena, her husband, filed New York State combined income tax resident returns for 1970, 1971, 1972 and 1973, on which she reported business income from her activities as a researcher. Unincorporated business tax return forms were attached to the income tax returns as follows:

<u>YEAR</u>	<u>SIGNED</u>	<u>WRITTEN NOTATION</u>
1970	Yes	"Not applicable- personal service professional"
1971	No	"Not applicable- professional service"
1972	(None filed or attached)	
1973	No	"Personal service- specialist in consumer psychology"

A schedule of gross business income and business expenses was not submitted with the personal income tax returns which were filed, or with the unincorporated business tax forms which were attached. In addition to the written notations previously quoted, the unincorporated business tax forms contained no other information except for petitioner's name, address and social security number.

The Income Tax Bureau issued two notices of deficiency against petitioner. One was dated March 31, 1975 for 1970, 1971 and 1972 and the other was dated March 29, 1976 for 1973. The notices asserted unincorporated business tax on the income derived from petitioner's activities as a consultant in market research. The notices imposed penalties under sections 685(a)(1) and 685(a)(2) of the Tax Law for 1973, and also made certain adjustments with respect to personal income tax for 1972 and 1973, which were conceded to by petitioner.

3. Petitioner, Patricia L. Sabena, is a specialist in consumer psychology, with a Bachelor of Science degree in marketing from Duquesne University's School of Business Administration. In 1978 five years after the last year at issue, petitioner received a Master of Arts degree in psychology from Hunter College. She conducted her thesis research at Payne Whitney Clinic in the Cornell Medical Center at New York Hospital.

4. Petitioner, Patricia L. Sabena, was retained by her clients for the purpose of developing hypotheses regarding product strengths and weaknesses, brand profiles, new product opportunities, concept development and advertising communications. These hypotheses are developed from group interviews, which are used to probe and interpret consumers' behavior, motivation, needs, perceptions, language, and imagery. Essentially, her research explored the consumer psychology of a general consumer area or activity, but not a particular brand or service. For example, if petitioner's client was a soap manufacturer, her research would primarily involve the psychological analysis of the bath-taking process, and not the use of the particular brand of soap manufactured by that client.

5. Petitioner's finished product consisted of a written psychological research report, which was given to her client for whatever use the client desired. Usually the report did not contain specific recommendations for improving the particular product or its promotion. Each report contained the following statement regarding the use and application of her research:

The findings of this study, as well as those of any group session research, must be read with a certain understanding of the characteristics and limitations of the technique.

This kind of research can generate feelings, impressions or suggestions, rather than provide clear cut answers or directions. It is dangerous to consider this kind of research projectable or absolute. Instead, it is best used for developing hypotheses about how and why people think and behave the way they do.

6. Petitioner, Patricia L. Sabena, has won awards, has lectured, and has published articles in the field of group and consumer psychology.

7. Petitioner is considered an expert in consumer psychology by her clients, which include Vicks Chemical Company, Colgate-Palmolive Company, General Goods Corporation, Lever Brothers Company and Standard Brands.

8. Petitioner's income was derived totally from personal services which she rendered, and capital was not a material income producing factor.

9. Group and consumer psychology is considered a branch of psychology by the American Psychological Association. Petitioner was a member of the American Psychological Association while a graduate student at Hunter College.

CONCLUSIONS OF LAW

A. That petitioner, Patricia L. Sabena's activities during 1971, 1972 and 1973 did not constitute the practice of a profession, within the meaning of section 703(c) of the Tax Law; however, this conclusion is limited to those specific years, and any subsequent year must be considered de novo, particularly in view of petitioner's academic achievements.

B. That the services rendered by petitioner during said years constituted the carrying on of an unincorporated business; thus, the income derived therefrom is subject to unincorporated business tax under section 701 of the Tax Law.

C. That the unincorporated business tax forms as submitted for 1970, 1971 and 1973 did not constitute the filing of unincorporated business tax returns, within the meaning and intent of sections 722 and 658 of the Tax Law; accordingly, unincorporated business tax may be assessed at any time.

D. That the petition of Patricia L. Sabena is granted to the extent that the penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law for 1973 are cancelled, since petitioner's failure to file an unincorporated business tax return properly for 1973 was due to reasonable cause, and not to willful neglect.

E. That the Income Tax Bureau is hereby directed to modify the notices of deficiency issued on March 29, 1976; that the Notice of Deficiency issued on March 31, 1975 is sustained; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER