

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Robert Ciavolino :

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 1969 - 1974. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Robert Ciavolino, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

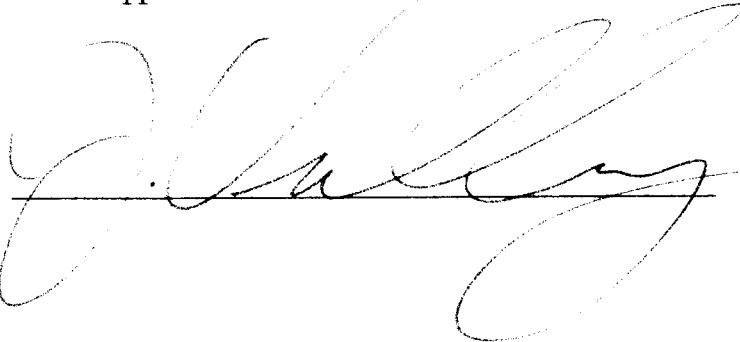
Robert Ciavolino
2505 E. 65th St.
Brooklyn, NY 11234

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
17th day of October, 1980.

Deborah A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Robert Ciavolino

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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 1969 - 1974. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Angelo J. Arculeo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

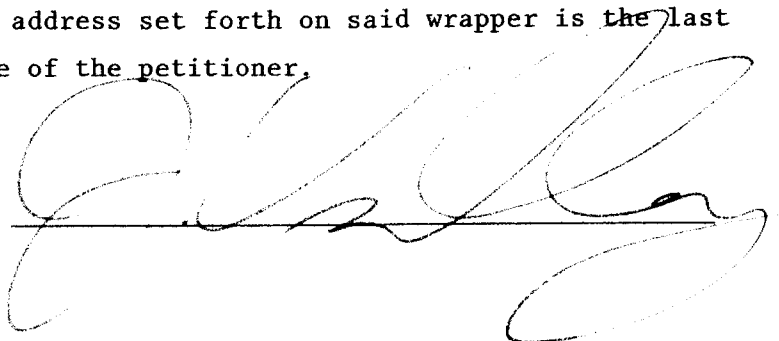
Mr. Angelo J. Arculeo
Arculeo & D'Ambrosio
20 Vesey St.
New York, NY 10007

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
17th day of October, 1980.

Deborah A. Bank



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

October 17, 1980

Robert Ciavolino
2505 E. 65th St.
Brooklyn, NY 11234

Dear Mr. Ciavolino:

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
Angelo J. Arculeo
Arculeo & D'Ambrosio
20 Vesey St.
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT CIAVOLINO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1969 through 1974.	:	

Petitioner, Robert Ciavolino, 2505 East 65th Street, Brooklyn, New York 11234, 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 1969, 1970, 1971, 1972, 1973 and 1974 (File No. 19498).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 22, 1980 at 9:15 A.M. Petitioner appeared by Angelo J. Arculeo, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was engaged in a profession, and, if so, whether eighty percentum of unincorporated business gross income for the years at issue was derived from personal services pursuant to section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Robert Ciavolino, and his wife, jointly filed New York State income tax resident returns for subject years on which petitioner reported his income as a band leader. Petitioner did not file unincorporated business tax returns for said years.

2. On April 11, 1977, the Audit Division issued a Notice of Deficiency in the amount of \$6,128.31, based on a Statement of Audit Changes which held petitioner's activities as a booking agent and band leader subject to unincorporated business tax. In addition, penalties in the amount of \$2,646.10 were imposed pursuant to section 685, subsections (a)(1) and (a)(2) of the Tax Law.

3. Petitioner is a band leader, who for years at issue, derived a significant portion of his gross income from performing at social functions. In addition, petitioner's gross income also included remuneration from other band leaders in consideration for informing them of pending social functions which he was unable to accept because of prior commitments. The band leaders who petitioner informed of available bookings, performed under their own names.

4. Petitioner failed to submit evidence as to what portion of his gross receipts, for years at issue, represented income from personal services actually rendered by him as a band leader, and what portion of his gross receipts represented remuneration received by him from other band leaders.

5. Petitioner did not contest penalties imposed pursuant to section 685, subsections (a)(1) and (a)(2) of the Tax Law.

CONCLUSIONS OF LAW

A. That petitioner's, Robert Ciavolino, occupation as a band leader is a profession (Matter of Voorhees v. Bates, 308 N.Y. 184). However, petitioner failed to establish that more than eighty percentum of his gross receipts, for subject years, was derived from personal services actually rendered by him as a band leader pursuant to section 703(c) of the Tax Law. Therefore, petitioner is subject to unincorporated business tax where he fails to maintain adequate records to establish what percentage of his gross receipts are attributable to personal services actually rendered by him and what percentage of his gross receipts were derived from his non-professional activities.

B. That petitioner has failed to meet the requisite element necessary for exclusion of a professional, viz, that more than eighty percentum of the unincorporated business gross income for subject years was derived from personal services actually rendered by him in accordance with the meaning and intent of section 703(c) of the Tax Law.

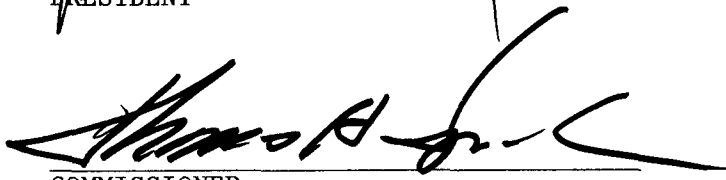
C. That the petition of Robert Ciavolino is denied and the Notice of Deficiency dated April 11, 1977, together with such penalty and interest as may be legally owing.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER