

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Sal A. Claroni

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, 1970, 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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Sal A. Claroni, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sal A. Claroni
138 Greenridge Ave.
White Plains, NY 10605

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Sal A. Claroni
138 Greenridge Ave.
White Plains, NY 10605

Dear Mr. Claroni:

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

In the Matter of the Petition	:	
of	:	
SAL A. CLARONI	:	DECISION
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 and 1972	:	

Petitioner, Sal A. Claroni, 138 Greenridge Avenue, White Plains, New York 10605, 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 through 1972 (File No. 15781).

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 June 20, 1978 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner's activities constituted the practice of a profession and, thus, are not deemed to be activities constituting an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Sal A. Claroni, timely filed New York State personal income tax returns for the years 1969 through 1972. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued a Statement of Audit Changes to petitioner, on the grounds that his income during the years at issue was derived from his tax practice and, therefore, was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on March 31, 1975 for \$1,230.48 in unincorporated business tax, plus \$531.79 in penalty and \$274.77 in interest for a total of \$2,037.04.

3. Petitioner contended that he was engaged in the practice of the profession of accounting, and that tax preparation resulted in from ten to fifteen percent of his income and was a small phase of his accounting activities.

4. Petitioner graduated from Long Island University in 1956 with a Bachelor of Science degree and a major in accounting. His work experience from 1956 to 1969 included work as an auditor for New York State, as an Internal Revenue Agent Trainee, as a Financial and Budget Analyst and Accountant for Sperry Rand Corporation, employment with a public accountant and employment with a certified public accountant as an outside auditor.

5. In 1969 petitioner went into business for himself. He serviced many small accounts for which he performed all the accounting services required. He gathered information from clients monthly, classified all expenses, brought books up to date, prepared income statements and balance sheets yearly and prepared all tax returns, informational returns and any other financial statements and schedules which were required by his clients for any business purpose. Petitioner also represented clients before the Internal Revenue Service and for the New York State Income Tax Bureau. During income tax season, petitioner also prepared tax returns for individuals who were referred to him by his clients.

6. Petitioner contended that he avoided the use of the word "accountant" to describe his activities on his letterhead, business cards and tax returns because he had never obtained a license from the New York State Education Department.

7. Petitioner maintained an office in his home. Most of his time was spent at his clients' place of business. More than 80% of his income was derived from personal service and capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Sal A. Claroni, constituted the practice of the profession of Public Accounting during the years 1969 through 1972 and are thus deemed not to be activities constituting an unincorporated business (section 703(c) of the Tax Law).

B. That the petition of Sal A. Claroni is granted and the Notice of Deficiency issued on March 31, 1975 is cancelled.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER