

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Evan S. Jackson :
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 1970, 1971 & 1972. :

AFFIDAVIT OF MAILING

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 25th day of April, 1980, he served the within notice of Decision by certified mail upon Evan S. Jackson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Evan S. Jackson
2226 Canyon Dr.
Arcadia, CA

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
25th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Evan S. Jackson :

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 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 25th day of April, 1980, he served the within notice of Decision by certified mail upon Tullio Bruno 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. Tullio Bruno
938 Port Washington Blv.
Port Washington, NY

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
25th day of April, 1980.

Joanne Krapp

J. Vredenburg

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

April 25, 1980

Evan S. Jackson
2226 Canyon Dr.
Arcadia, CA

Dear Mr. Jackson:

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
Tullio Bruno
938 Port Washington Blv.
Port Washington, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EVAN S. JACKSON : 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 and 1972. :

Petitioner, Evan S. Jackson, 2226 Canyon Drive, Arcadia, California, 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 through 1972 (File No. 11150).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 26, 1977 at 3:50 P.M. Petitioner appeared by Tullio Bruno, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a horse trainer during 1970, 1971 and 1972 constituted the carrying on of a profession and, thus, were exempt from unincorporated business tax.

II. Whether petitioner may allocate earned income to sources within and without New York State for unincorporated business tax purposes.

III. Whether penalties imposed against petitioner pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, for failing to file unincorporated business tax returns and pay unincorporated business tax for 1970 through 1972, were proper.

FINDINGS OF FACT

1. Petitioner, Evan S. Jackson, filed New York State personal income tax returns for 1970, 1971 and 1972. The 1970 and 1971 personal income tax returns were not filed timely, while the 1972 return was filed timely under an extension. 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, and that the income derived therefrom was subject to unincorporated business tax. On October 27, 1975, it issued a Notice of Deficiency against petitioner for 1970, 1971 and 1972, asserting unincorporated business tax of \$3,390.19, plus penalty of \$1,367.51 (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) and interest of \$712.20.

3. Petitioner is a horse trainer. After serving five years as an apprentice, he became an assistant trainer and then a trainer. He has trained valuable horses, some of which were sold for \$300,000.00 to \$400,000.00. These horses have won important races in New York and in California. Petitioner is also an authority on horse breeding.

4. Petitioner is a member of the American Training Association and of the New York Racing Association, and is also a member of similar organizations in California. He is licensed as a trainer in New York State.

5. Petitioner receives fees from owners for training their horses, and he shares in the purses when the horses win.

6. Petitioner did not go beyond high school, nor was he trained as a veterinarian.

7. Petitioner contended that his horse-training activities were carried on both in New York State and in California. He also contended that an estimated

75 percent of gross receipts were attributable to New York State sources, that total wages paid were 100 percent attributable to New York State sources and that total rental payments were 100 percent attributable to California. He further contended that using the three-factor allocation formula provided for by section 707(c) of the Tax Law, 58.33 percent of his business income would be attributable to New York State sources for each year at issue. No records or other documentation were submitted to support these contentions.

CONCLUSIONS OF LAW

A. That horse training is not a profession within the meaning of section 703(c) of the Tax Law. The New York Court of Appeals has stated in Matter of Koner v. Procaccino, 39 N.Y.2d 258, the following:

The guiding principle was set forth in People ex rel. Tower v. State Tax Commission (282 N.Y. 407, 412) in which we held that the requirements of a profession are fulfilled for the purposes of the exemption statute, when it is shown that 'the service rendered...requires knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study.'

Therefore, petitioner's activities constituted the carrying on of an unincorporated business, and the income derived therefrom is subject to unincorporated business tax for 1970, 1971 and 1972.

B. That although petitioner may have carried on business within and without New York State, he has failed to sustain the requisite burden of proof established by sections 722 and 689(e) of the Tax Law, to show that he had a regular place of business outside New York State; therefore, all business income is allocable to New York State, pursuant to section 707(a) of the Tax Law.

C. That the penalties imposed pursuant to sections 722 and 685(a) (1) and 685(a) (2) of the Tax Law were properly imposed; therefore, said penalties are sustained.

D. That the petition of Evan S. Jackson is denied and the Notice of Deficiency issued on October 27, 1975 is sustained, together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

APR 25 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER