

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Cynthia C. MacGrath :

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 1968 - 1970. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Cynthia C. MacGrath, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

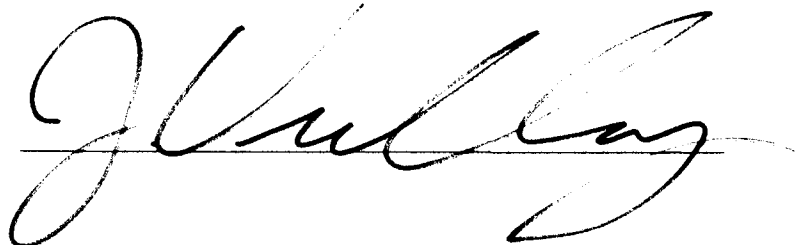
Cynthia C. MacGrath
9606 Pinkey Ct.
Potomac, MD 20854

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
16th day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cynthia C. MacGrath :
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 1968 - 1970. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Martin Bach the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

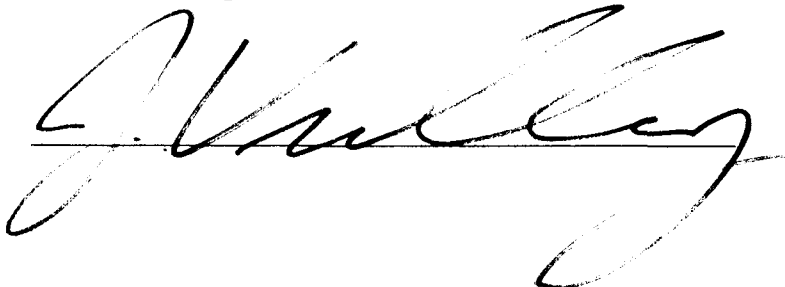
Mr. Martin Bach
120 Wall St.
New York, NY 10005

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
16th day of May, 1980.

Joanne Knapp



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

May 16, 1980

Cynthia C. MacGrath
9606 Pinkey Ct.
Potomac, MD 20854

Dear Ms. MacGrath:

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
Martin Bach
120 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CYNTHIA C. MacGRATH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

Petitioner, Cynthia C. MacGrath, 9609 Pinkey Court, Potomac, Maryland 20854, 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 1968, 1969 and 1970 (File No. 16439).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 21, 1979 at 2:45 P.M. Petitioner appeared by Martin Bach, CPA. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as an advertising artist is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Cynthia C. MacGrath, filed New York State combined income tax returns with her husband for the years 1968, 1969 and 1970, wherein she reported business income in each year from her activities, which were described on such returns as artist (1968), artist (1969), and artist-advertising (1970). She did not file unincorporated business tax returns for any of said years at issue.

2. On January 8, 1974, the Income Tax Bureau issued a Statement of Audit Changes wherein petitioner's net business income reported was held subject to the imposition of unincorporated business tax on the basis that the income from her activities as an advertising artist is subject to said tax. Accordingly, a Notice of Deficiency was issued against petitioner on August 26, 1974, asserting unincorporated business tax in the amount of \$1,332.48, plus penalty of \$535.96, and interest of \$332.69, for a total due of \$2,201.13.

3. On November 24, 1974, Petitioner filed a petition wherein her ground for redetermination was stated, in part, that she was "a self-employed marketing-advertising consultant". In a letter from petitioner's husband dated January 17, 1974, it is stated that "Mrs. MacGrath is not an advertising artist but is a self-employed marketing-advertising consultant".

4. During the hearing, it was contended that petitioner was an employee of J. C. Penney & Co., Inc. during the years at issue; and, as such, her income was not subject to the unincorporated business tax. Petitioner derived income from other principals in addition to J. C. Penney, but the names of such principals, and the income derived therefrom, were not disclosed.

5. Petitioner did not submit any documentary evidence with respect to the nature of services rendered for petitioner's principals, business relationships with such principals, or the degree of direction and control exercised by such principals over petitioner's activities.

CONCLUSIONS OF LAW

A. That petitioner, Cynthia C. MacGrath, has failed to sustain the burden of proof required under sections 722 and 689(e) of the Tax Law to show that her income was derived from activities carried on as an employee under bona fide employer-employee relationships.

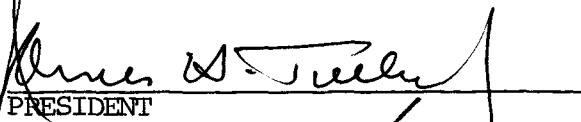
B. That the business activities of petitioner constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income derived therefrom was subject to the imposition of unincorporated business tax under section 701 of the Tax Law.

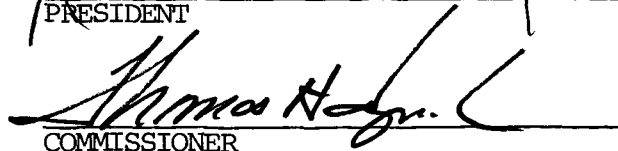
C. That the petition of Cynthia C. MacGrath is denied and the Notice of Deficiency dated August 26, 1974 is sustained, together with such penalty and interest which is lawfully owing.

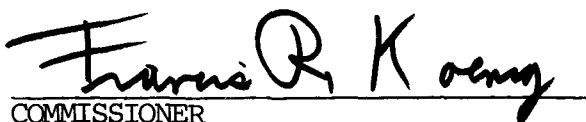
DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER