

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Marilyn F. Manning :

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. :

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 13th day of February, 1980, he served the within notice of Decision by certified mail upon Marilyn F. Manning, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

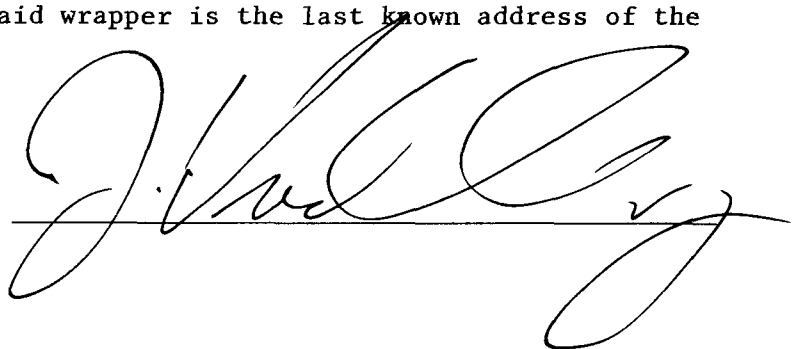
Marilyn F. Manning  
175 W. 12th St.  
New York, NY 10011

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  
13th day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Marilyn F. Manning :  
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. :

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 13th day of February, 1980, he served the within notice of Decision by certified mail upon Howard Schlesinger 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. Howard Schlesinger  
285 Madison Ave.  
New York, NY 10017

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  
13th day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 13, 1980

Marilyn F. Manning  
175 W. 12th St.  
New York, NY 10011

Dear Ms. Manning:

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  
Howard Schlesinger  
285 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MARILYN F. MANNING	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1969	:	
and 1970.	:	

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Petitioner, Marilyn F. Manning, 175 West 12th Street, New York, New York 10011, 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 and 1970 (File No. 14238).

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 September 20, 1978 at 2:45 P.M. Petitioner appeared by Howard P. Schlesinger, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

#### ISSUE

Whether petitioner's activities as a psychotherapist for the years 1969 and 1970 constituted the practice of a profession and the income therefrom was thus exempt from unincorporated business tax.

#### FINDINGS OF FACT

1. Petitioner, Marilyn F. Manning, timely filed New York State personal income tax returns for the years 1969 and 1970 on which she indicated her occupation to be a psychotherapist, and reported the income derived therefrom as business income. She did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioner on which the Bureau contended that her activities as a psychotherapist constituted the carrying on of an unincorporated business and the income derived therefrom was subject to the unincorporated business tax. Accordingly, on November 25, 1974, the Bureau issued a Notice of Deficiency for the years 1969 and 1970 in the amount of \$1,188.83 in unincorporated business tax, plus \$546.20 in penalty, plus \$291.88 in interest, for a total due of \$2,026.91.

3. Petitioner contended that she was engaged in the practice of a profession, and thereby exempt from the imposition of unincorporated business tax.

4. Petitioner has been a licensed, registered professional nurse since 1956. After earning a Bachelor of Science degree, she received a masters degree in nursing at New York University in 1959. In 1964, she received a masters in psychology from the City College of New York.

5. Petitioner was self-employed and carried on her occupation from an office in her home. Her patients were obtained by referrals from psychiatrists, psychologists, medical doctors and by recommendations of former patients. Petitioner helped people deal with mental conditions. She interviewed patients, diagnosed and treated their emotional problems through counseling. The work was psychological in nature.

6. More than 80 percent of petitioner's gross income was derived from personal services rendered and capital was not a material income producing factor.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner, Marilyn F. Manning, as a psychotherapist during 1969 and 1970 constituted the practice of a profession, and the income derived therefrom was exempt from imposition of the unincorporated business tax in accordance with the meaning and intent of Section 703(c) of the Tax Law.