

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Joan Scafarello :

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 Year 1973. :

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 Joan Scafarello, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

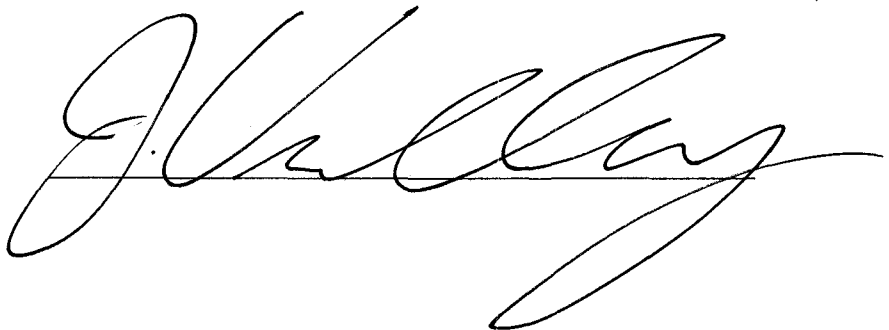
Joan Scafarello
221 E. 50th St.
New York, NY 10022

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
ALBANY, NEW YORK 12227

February 13, 1980

Joan Scafarello
221 E. 50th St.
New York, NY 10022

Dear Ms. Scafarello:

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
JOAN SCAFARELLO
for Redetermination of a Deficiency or
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the
Year 1973. :

DECISION

Petitioner, Joan Scafarello, 221 East 50th Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1973 (File No. 18859).

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 July 18, 1979 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a researcher during the year 1973, is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Joan Scafarello, filed a New York State Income Tax Resident Return for 1973, wherein she reported business income from her activities as a "Researcher" in the amount of \$11,785.65. She did not file an unincorporated business tax return for said year.

2. On February 21, 1975, the Income Tax Bureau issued a Statement of Audit Changes, wherein the Bureau imposed unincorporated business tax on petitioner's reported business income. Accordingly, on February 28, 1977, a

Notice of Deficiency was issued against petitioner, asserting unincorporated business tax of \$249.04, penalty of \$99.61, and interest of \$53.68 for a total due of \$402.33.

3. During taxable year 1973, petitioner rendered services to three book publishing companies: Holt, Rinehart and Winston, Randomhouse and Ridge Press. Her activities for each principal were identical and consisted basically of finding pictures, as specified by her principals, for use in books being published. The pictures and illustrations obtained by petitioner were the result of extensive research, and were usually culled from various sources such as museums, historical societies, libraries and private collections.

4. Petitioner was required to attend meetings with her principals, and complete each assignment within a specific time limit. She had no written contracts with any of her principals. She was paid at the rate of \$8.00 per hour, subsequent to submitting a bill for her services to her principals. All three principals reported her income on an information return rather than a wage and tax statement and they did not withhold income or social security taxes from her compensation. She received no pension benefits and was not paid for either sick or vacation leave.

5. Petitioner stated that she was reimbursed for all her business expenses. She testified that she received unemployment insurance benefits during a portion of 1973 and was held to be an employee by the New York State Department of Labor.

6. Petitioner testified that she did not work for more than one principal at any given time. On terminating her business relationship with one principal, she would seek to commence rendering services elsewhere.

7. Petitioner contended that she was an employee since her principals "had the right to direct and control her work". She also claimed employee

status on the basis that her principals supplied her with a desk, telephone, file cabinets and stationery on their business premises. Further, petitioner contended that, in addition to being an employee, the income at issue is exempt from unincorporated business tax since it was derived from the practice of a profession "Art Editor". She stated said title was given to her by some of her principals and used interchangeably with her self-described title of "Researcher".

8. Petitioner holds a Bachelor of Arts degree from Mt. Holyoke College, where she majored in the history of art. She continued her studies at the University of Colorado, but the extent of such studies was not divulged.

9. More than 80 percent of petitioner's gross income from her activities at issue during 1973 was derived from personal services actually rendered by her. Furthermore, capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the term employee is defined as:

"An individual performing services for an employer under an employer-employee relationship. Generally, the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished, but also as to the details and means by which that result is to be accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done." [20 NYCRR 203.10(b)].

This requisite was nonexistent in petitioner's business relationships with her principals.

B. That the New York State Department of Labor may have held petitioner to be an employee is not controlling.

"The fact that the individual has been determined to be an employee or independent contractor by a court of administrative tribunal under any State, local or Federal law, generally has little bearing on the individual's status for the purpose of this section." [20 NYCRR 203.10(c)(4)].

C. That petitioner, Joan Scafarello, was not an employee of any of the three principals for which she rendered services during 1973, within the meaning and intent of section 703(b) of the Tax Law.

D. That although petitioner Joan Scafarello's business activities required a knowledge of art and research procedures, her vocation did not constitute the practice of a profession as defined in section 20 NYCRR 203.11(b)(1)(i). Accordingly, petitioner, Joan Scafarello, was not engaged in the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

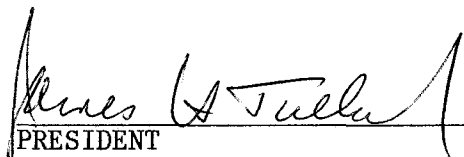
E. That activities of petitioner, Joan Scafarello, constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to the imposition of unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

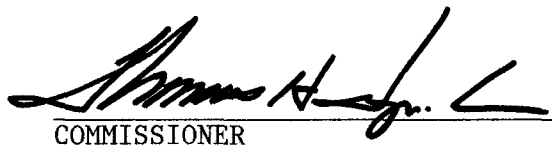
F. That the petition of Joan Scafarello is denied and the Notice of Deficiency dated February 28, 1977 is sustained, together with such penalty and interest which is lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 13 1980


PRESIDENT


COMMISSIONER

COMMISSIONER