STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Jean Volkmer :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Jean Volkmer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jean Volkmer
30 W. 60th St.
New York, NY 10023

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
14th day of November, 1980.

Deborah G Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Stanley L. Hahn 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. Stanley L. Hahn
210 5th Ave.
New York, NY 10010

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
14th day of November, 1980.

Deborah A. Bank

J. Vredenburg

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

November 14, 1980

Jean Volkmer
30 W. 60th St.
New York, NY 10023

Dear Ms. Volkmer:

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
Stanley L. Hahn
210 5th Ave.
New York, NY 10010
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEAN VOLKMER	:	DECISION
for Redetermination of a Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Year 1973.	:	

Petitioner, Jean Volkmer, 30 West 60th Street, New York, New York 10023, 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. 19516).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 27, 1979 at 10:30 A.M. Petitioner appeared by Stanley L. Hahn, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner's activities as an art conservator constitute the practice of a profession, of which the income derived therefrom is exempt from the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Jean Volkmer, timely filed a New York State Income Tax Resident Return for the year 1973, on which she reported net business income from her activities as a "conservator". Petitioner did not file an unincorporated business tax return for the year 1973.

2. On April 11, 1977, the Audit Division issued a Notice of Deficiency, along with an explanatory Statement of Audit Changes, on which the income derived from petitioner's activities as a conservator was held subject to the unincorporated business tax. In addition, penalties in accordance with sections 685(a)(1) and 685(a)(2) of the Tax Law were imposed, but not challenged by petitioner.

3. Petitioner, Jean Volkmer, majored in studio art and was awarded an art diploma from Washington Irving High School. In 1942, petitioner graduated from Pratt Institute in Brooklyn, New York, with a certificate in art. Subsequently, petitioner joined the staff of the Museum of Modern Art in New York City and worked in the Exhibitions and Publication Department. In addition, petitioner rendered free-lance design and art work.

4. In 1949, petitioner, Jean Volkmer, was granted a six-month leave of absence to study, draw and paint in Europe. Upon returning to the United States in 1954, petitioner applied her art skills and knowledge toward the conservation of paintings on behalf of the Museum of Modern Art. In 1959, petitioner, became director of the newly formed Conservation Department at the Museum of Modern Art. In 1973, petitioner was employed by the Museum and also self-employed in art conservation. However, the sole income at issue was derived from her self-employed activities.

5. Petitioner maintained that, until recent years, the expertise of an art conservator was acquired through experience and apprenticeship. However, currently, various institutions offer courses, internship and degree programs in art conservation.

6. Petitioner's activities as a conservator require a thorough knowledge of art, art history, art materials, chemicals, adhesives, solvents, varnishes and the use of other equipment such as the microscope and ultraviolet light. Petitioner maintained that the appropriate application of this knowledge required creativity and imagination.

7. Petitioner's self-employed activities during 1973 were usually conducted with another art conservator. They worked collectively on a particular project and would split the fee charged on a "50-50" basis. Periodically, petitioner would hire another conservator to perform the basic aspects of a particular job, so that she could concentrate on the more difficult and skillful aspects involved.

8. Petitioner is a member of two organizations for art conservators, one of which provided a code of ethics, lectures and information. However, no government agency governs or regulates the activities of an art conservator.

9. Petitioner has taught and published articles in the field of art conservation.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Jean Volkmer, constituted an occupation in which a professional knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, was used by its practical application for the conservation of masterpieces of art. Accordingly, petitioner's attainment in professional knowledge, along with the nature and character of the services performed, constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the petition of Jean Volkmer is granted and the Notice of Deficiency issued April 11, 1977 for the year 1973 is cancelled.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER