

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Philip S. Gips :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Philip S. Gips, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip S. Gips
24 Highwood Ave.
Larchmont, NY 10538

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
5th day of February, 1981.

Cornelia A. Hagellund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :
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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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Herbert Biegelman 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. Herbert Biegelman
299 Broadway
New York, NY 10007

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
5th day of February, 1981.

Connie A. Haglund

J. Vredenburg

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

February 5, 1981

Philip S. Gips
24 Highwood Ave.
Larchmont, NY 10538

Dear Mr. Gips:

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
Herbert Biegelman
299 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PHILIP S. GIPS : 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, Philip S. Gips, 24 Highwood Avenue, Larchmont, New York 10538, 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. 19310).

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 June 26, 1980 at 9:15 A.M. Petitioner appeared with Herbert Biegelman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner's activities as a graphic art designer constituted the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Philip S. Gips, timely filed a New York State Combined Income Tax Return with his wife for the year 1973 whereon he reported business income from his activities engaged in as a "Graphic Art Designer". He did not file an unincorporated business tax return for said year.

2. On February 4, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that petitioner's reported business activities "constitutes the carrying on of an unincorporated business and as such all income derived therefrom is subject to the unincorporated business tax." Additionally, said statement included an adjustment disallowing certain business expenses claimed as the result of a Federal audit conducted for the year at issue herein. Accordingly, a Notice of Deficiency was issued against petitioner on March 28, 1977 asserting unincorporated business tax of \$842.88, penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, for failure to file an unincorporated business tax return and failure to pay the tax determined to be due, respectively of \$341.37, plus interest of \$191.90, for a total due of \$1,376.15.

3. During the year at issue petitioner's activities as a graphic art designer consisted of designing posters, letterheads, trademarks and various other items primarily for commercial purposes. Petitioner contended that said activities constituted the practice of a profession.

4. Petitioner, who has been in the field of graphic art design for over twenty years, attended the Cooper Union School of Design, and the Yale School of Art and Architecture, where he earned a Bachelor of Fine Arts degree.

5. During the mid 1960's, petitioner taught a graphic design course at the School of Visual Arts.

6. During the year at issue, petitioner employed an assistant who worked under his direct supervision. Additionally, petitioner contracted independent artists and photographers to work in conjunction with him on certain projects.

7. No Federal, state, or city statute regulated the activities or dictated the minimum educational requirements of a graphic art designer.

8. Petitioner filed an unincorporated business tax return for 1972, but contended that this was done so erroneously. No return was filed for the year at issue based on the advice of the certified public accountant utilized by petitioner to prepare his returns.

CONCLUSIONS OF LAW

A. That the word "Profession" implies attainments in professional knowledge in some department of science or learning. The performing of services dealing with the conduct of business itself, including the promotion of sales or services of such business, does not constitute the practice of a profession, even though the services involve the application of specialized knowledge. Although petitioner's activities as a graphic art designer require special knowledge and skills, the application and nature of these attributes do not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Philip S. Gips, during the year 1973, constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law. Accordingly, the income derived therefrom was subject to the unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

C. That the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are hereby abated due to reasonable cause.

D. That the petition of Philip S. Gips is granted to the extent provided in Conclusion of Law "C" (Supra) and that said petition is in all other respects denied.

E. That the Audit Division is hereby directed to modify the Notice of Deficiency dated March 28, 1977 to be consistent with the decision rendered herein.

DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER