

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Guido Castelli & Gordon Hendricks :
Gordon Hendricks Company : 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 1971-1973. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Guido Castelli & Gordon Hendricks, Gordon Hendricks Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Guido Castelli & Gordon Hendricks
Gordon Hendricks Company
344 W. 72nd 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
20th day of February, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Guido Castelli & Gordon Hendricks :
Gordon Hendricks Company : 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 1971-1973. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon David Alevy 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. David Alevy
Alevy & Cantor
745 Fifth Ave.
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 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
20th day of February, 1981.

Germa A. Hagelund

J. Vredenburg

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

February 20, 1981

Guido Castelli & Gordon Hendricks
Gordon Hendricks Company
344 W. 72nd St.
New York, NY 10023

Gentlemen:

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
David Alevy
Alevy & Cantor
745 Fifth Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GUIDO CASTELLI and GORDON HENDRICKS	:	DECISION
d/b/a GORDON HENDRICKS COMPANY	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971, 1972 and 1973.	:	

Petitioners, Guido Castelli and Gordon Hendricks, d/b/a Gordon Hendricks Company, 344 West 72nd 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 years 1971, 1972 and 1973 (File No. 14291).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1978 at 11:15 A.M. Petitioners appeared by David Alevy, CPA. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether Gordon Hendricks Company is exempt from unincorporated business tax, with regard to income earned by Gordon Hendricks as a writer.

II. Whether the business of Gordon Hendricks Company is carried on both within and without New York State.

FINDINGS OF FACT

1. Petitioner, Gordon Hendricks Company, filed New York State partnership returns (Form IT-204) for the years 1971, 1972 and 1973, claiming an allocation

of income to New York State sources of 40% in 1971 and 43% in both 1972 and 1973.

2. A consent extending the period of limitation for 1971 until April 15, 1976 was executed in accordance with section 683(c)(2) of the Tax Law.

3. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency to Gordon Hendricks Company, indicating a deficiency of \$2,120.55, plus interest, for 1971, 1972 and 1973. The deficiency was based on denial of the allocations of income to sources outside New York State.

4. Gordon Hendricks and Guido Castelli were partners in Gordon Hendricks Company during the years at issue.

5. The partnership income for the years in dispute breaks down as follows:

<u>Year</u>	<u>Total Gross Income</u>	<u>Castelli Portion</u>	<u>Hendricks Portion</u>
1971	\$45,920	\$35,332	\$10,588
1972	\$45,266	\$36,273	\$ 8,993
1973	\$45,435	\$37,676	\$ 7,759

6. Gordon Hendricks is a writer and consultant. His specialty is 19th Century art. One-quarter of his income during the years in question represented royalty income from writing, the balance being earned in his role as an art consultant.

7. Petitioner Guido Castelli does fashion illustrations for Montgomery Ward. The illustrations are used in newspaper advertisements.

8. In 1966 Mr. Hendricks and Mr. Castelli purchased a house in Spring Lake, New Jersey. During the period April through November for the years in question, a typical week would involve three and four day weekends being spent by the petitioners in New Jersey and the balance in New York.

9. Mr. Hendricks did research and writing at the Spring Lake house where he maintained (as he did in his New York apartment) an important collection of art history materials.

10. Mr. Castelli had a studio in the Spring Lake house. Records were produced at the formal hearing indicating that gross income from the work Mr. Castelli did on behalf of Montgomery Ward at the Spring Lake house totaled as follows:

1971	\$ 8,420.75
1972	\$ 9,423.75
1973	\$10,529.50

11. Mr. Hendricks was not able to produce any records to substantiate the sums he may have earned while working in New Jersey.

12. Unincorporated business tax returns were not filed with the State of New Jersey.

13. Gordon Hendricks Company had stationery with a Spring Lake, New Jersey address on it. The company maintained a New Jersey bank account.

CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law provides as follows:

"Professions. -- The practice of law, medicine, dentistry or architecture, and the practice of any other profession in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or the members of the partnership or other entity, shall not be deemed an unincorporated business."

B. That professions are exempt from the unincorporated business tax, by reason of being specifically excluded from the statutory definition of unincorporated business. The occupation of writer is a profession; however, the occupation of commercial artist is not a profession. (See: Wilson v. Bates, 282 App. Div. 1099, 126 N.Y.S.2d 550, White v. Murphy, et al., 11 A.D.2d 854, 203 N.Y.S.2d 44, aff'd (no op.) 9 N.Y.2d 995, 218 N.Y.S.2d 67.)

C. That since Mr. Castelli is a commercial artist, more than 80 percent of the gross income of Gordon Hendricks Company was not attributable to personal services rendered by members of a partnership engaged in the practice of a

profession. The partnership is not entitled to the exemption from the unincorporated business tax for the professions for that portion of Gordon Hendricks' income earned as a writer.

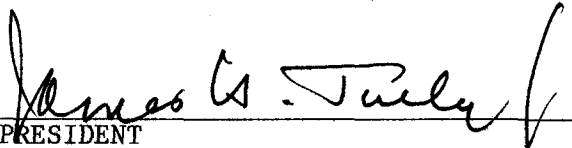
D. That the Spring Lake house does not constitute a regular place of business from which the partnership regularly and systematically carries on its business affairs within the meaning and intent of section 707 of the Tax Law. Accordingly, the excess of the unincorporated business gross income over the unincorporated business deductions is allocated to New York in accordance with section 707(a) of the Tax Law.

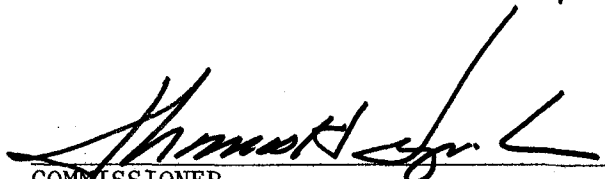
E. That the petition of Guido Castelli and Gordon Hendricks d/b/a Gordon Hendricks Company, is denied and the Notice of Deficiency issued on January 26, 1976 is sustained together with any additional interest lawfully owing.

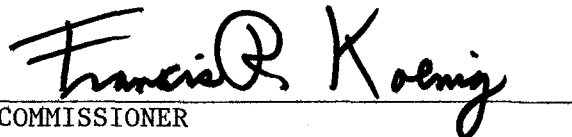
DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1981


PRESIDENT


COMMISSIONER


COMMISSIONER