

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Frank Martorelli & James Kenyon :
Individually & Partners of Martorelli & Kenyon : 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 1961 - 1963. :

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 Frank Martorelli & James Kenyon, Individually & Partners of Martorelli & Kenyon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank Martorelli & James Kenyon
Individually & Partners of Martorelli & Kenyon
313 Wadsworth St.
Syracuse, NY 13208

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.

Cornelia A. Hegdorn

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Frank Martorelli & James Kenyon :
Individually & Partners of Martorelli & Kenyon : 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 1961 - 1963. :

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 Edward J. Lundy 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. Edward J. Lundy
Bieling & Lundy
351 S. Warren St.
Syracuse, NY 13202

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.

Cornie J. Hagelund

J. Vredenburg

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

February 20, 1981

Frank Martorelli & James Kenyon
Individually & Partners of Martorelli & Kenyon
313 Wadsworth St.
Syracuse, NY 13208

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
Edward J. Lundy
Bieling & Lundy
351 S. Warren St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRANK MARTORELLI and JAMES KENYON	:	DECISION
INDIVIDUALLY AND AS CO-PARTNERS	:	
D/B/A MARTORELLI AND KENYON	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1961, 1962 and 1963.	:	

Petitioners, Frank Martorelli and James Kenyon, individually and as co-partners, d/b/a Martorelli and Kenyon, c/o Frank Martorelli, 313 Wadsworth Street, Syracuse, New York, 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 1961, 1962 and 1963 (File No. 01911).

A formal hearing was held before David Evans, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on February 4, 1980. Petitioners appeared by Bieling and Lundy, CPA's. The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether the Notice of Deficiency for the years in issue was barred by the statute of limitations.

FINDINGS OF FACT

1. Petitioners filed partnership returns (Form IT-204, N.Y.S. Income Tax and Unincorporated Business Tax Partnership Return) for the years 1961, 1962, 1963 and 1964 on or about April 5, 1962, April 12, 1963, March 3, 1964 and March 4, 1965, respectively. They indicated on said returns their business as

"artists". They entered on said returns items of income and deduction as reportable for Federal tax purposes. They indicated they were not subject to unincorporated business tax since more than 80 percent of their income was derived from personal services. The petitioners failed to complete the unincorporated business tax portions of the aforementioned IT-204 forms.

2. On February 16, 1968, petitioners executed a consent extending the period of limitation for assessment of unincorporated business tax to April 15, 1969 for the taxable year ended December 31, 1964.

3. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners imposing unincorporated business tax for the years 1961 through 1964 in the amount of \$2,225.79 on the ground that the business activities of the partnership as commercial artists constituted the carrying on of an unincorporated business and the income derived from this source was subject to tax under Article 23 of the Tax Law. Accordingly, a Notice of Deficiency was issued against petitioners on February 10, 1969 in the amount of \$2,225.79 for the years 1961 through 1964. The amount due for the year 1964 of \$235.73 plus interest has been paid. The amount at issue is \$1,936.01 plus interest.

4. Petitioners concede that their activities during the years in issue as commercial artists and the income derived therefrom was subject to unincorporated business tax.

CONCLUSIONS OF LAW

A. That the three-year period of limitation on assessment of unincorporated business tax does not apply when no tax return is filed nor does it apply when a return is filed but does not detail the nature of the business activity. (Arbesfeld, Goldstein v. State Tax Commission, 62 A.D.2d 627.) The filing requirements are not satisfied by the fact that the information necessary to

compute the tax is furnished by a return filed for the purpose of a different tax. (Hewitt v. Bates, 297 N.Y. 239.)

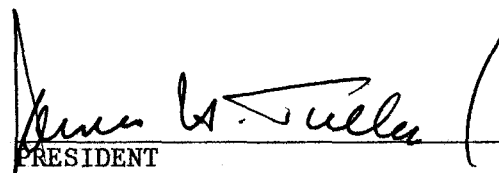
B. That the returns filed by the partnership did not provide enough detail as to the nature of the business activity which information was not sufficient to start the running of the period of limitation in accordance with the provisions of sections 722 and 683(a) of the Tax Law.

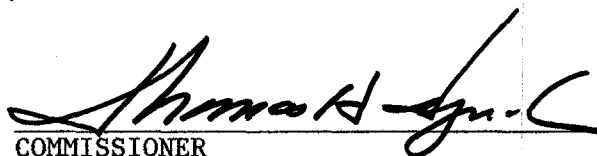
C. That the petition is denied and the Notice of Deficiency dated February 10, 1969 for the years 1961, 1962 and 1963 is sustained.

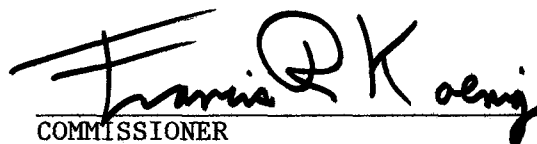
DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1981


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO *STC*..... DATE *3/2/81*...

*Representative's copy returned, no
better address.*

TA 26 (9-79)

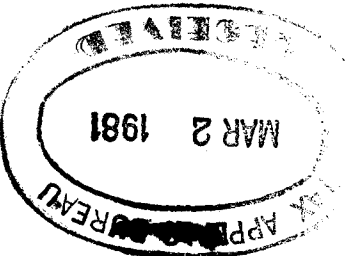
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



- ☐ RETURNED TO WRITER
- ☒ Moved, left no address
- ☐ No such number
- ☐ Moved, not forwardable
- ☐ Addressee unknown

Edward J. Lundy
Bieling & Lundy
351 S. Warren St.
Syracuse, NY 13202

*Order Apprais
2-9-80*



*Representatives
COPY.*

[Handwritten signature]

543410

64

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

February 20, 1981

Frank Martorelli & James Kenyon
Individually & Partners of Martorelli & Kenyon
313 Wadsworth St.
Syracuse, NY 13208

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
Edward J. Lundy
Bieling & Lundy
351 S. Warren St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRANK MARTORELLI and JAMES KENYON	:	DECISION
INDIVIDUALLY AND AS CO-PARTNERS	:	
D/B/A MARTORELLI AND KENYON	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1961, 1962 and 1963.	:	

Petitioners, Frank Martorelli and James Kenyon, individually and as co-partners, d/b/a Martorelli and Kenyon, c/o Frank Martorelli, 313 Wadsworth Street, Syracuse, New York, 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 1961, 1962 and 1963 (File No. 01911).

A formal hearing was held before David Evans, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on February 4, 1980. Petitioners appeared by Bieling and Lundy, CPA's. The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether the Notice of Deficiency for the years in issue was barred by the statute of limitations.

FINDINGS OF FACT

1. Petitioners filed partnership returns (Form IT-204, N.Y.S. Income Tax and Unincorporated Business Tax Partnership Return) for the years 1961, 1962, 1963 and 1964 on or about April 5, 1962, April 12, 1963, March 3, 1964 and March 4, 1965, respectively. They indicated on said returns their business as

"artists". They entered on said returns items of income and deduction as reportable for Federal tax purposes. They indicated they were not subject to unincorporated business tax since more than 80 percent of their income was derived from personal services. The petitioners failed to complete the unincorporated business tax portions of the aforementioned IT-204 forms.

2. On February 16, 1968, petitioners executed a consent extending the period of limitation for assessment of unincorporated business tax to April 15, 1969 for the taxable year ended December 31, 1964.

3. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners imposing unincorporated business tax for the years 1961 through 1964 in the amount of \$2,225.79 on the ground that the business activities of the partnership as commercial artists constituted the carrying on of an unincorporated business and the income derived from this source was subject to tax under Article 23 of the Tax Law. Accordingly, a Notice of Deficiency was issued against petitioners on February 10, 1969 in the amount of \$2,225.79 for the years 1961 through 1964. The amount due for the year 1964 of \$235.73 plus interest has been paid. The amount at issue is \$1,936.01 plus interest.

4. Petitioners concede that their activities during the years in issue as commercial artists and the income derived therefrom was subject to unincorporated business tax.

CONCLUSIONS OF LAW

A. That the three-year period of limitation on assessment of unincorporated business tax does not apply when no tax return is filed nor does it apply when a return is filed but does not detail the nature of the business activity. (Arbesfeld, Goldstein v. State Tax Commission, 62 A.D.2d 627.) The filing requirements are not satisfied by the fact that the information necessary to

compute the tax is furnished by a return filed for the purpose of a different tax. (Hewitt v. Bates, 297 N.Y. 239.)

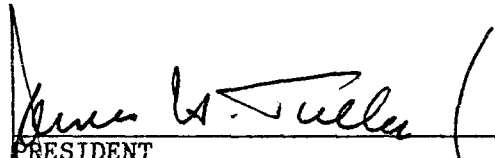
B. That the returns filed by the partnership did not provide enough detail as to the nature of the business activity which information was not sufficient to start the running of the period of limitation in accordance with the provisions of sections 722 and 683(a) of the Tax Law.

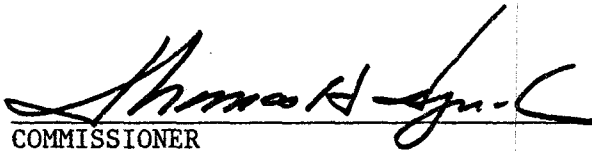
C. That the petition is denied and the Notice of Deficiency dated February 10, 1969 for the years 1961, 1962 and 1963 is sustained.

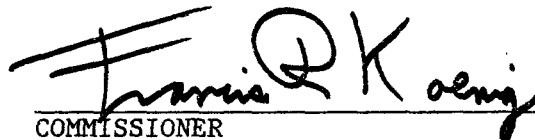
DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1981


PRESIDENT


COMMISSIONER


COMMISSIONER