

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Martin Sobel

:

:

: 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Martin Sobel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin Sobel
2348 Jones Rd.
Fort Lee, NJ 07024

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
19th day of June, 1981.

Cornie P. Hayeland

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Martin Sobel :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Bernard Goldman 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. Bernard Goldman
Goldman & Goldman
21 Loretta Dr.
Syosset, NY 11791

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
19th day of June, 1981.

Conrad R. Hagellund

J. Vredenburg

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

June 19, 1981

Martin Sobel
2348 Jones Rd.
Fort Lee, NJ 07024

Dear Mr. Sobel:

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
Bernard Goldman
Goldman & Goldman
21 Loretta Dr.
Syosset, NY 11791
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARTIN SOBEL	:	DECISION
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.	:	

Petitioner, Martin Sobel, 2348 Jones Road, Fort Lee, New Jersey 07024, 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. 14016).

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 May 25, 1979 at 10:45 A.M. Petitioner appeared by Bernard Goldman, CPA. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

- I. Whether the income from petitioner's activities during 1971, 1972 and 1973 is subject to unincorporated business tax.
- II. Whether the period of limitations on assessment has expired for 1971.
- III. Whether penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law were properly imposed.

FINDINGS OF FACT

1. Petitioner, Martin Sobel, and Nettie Sobel, his wife, timely filed joint New York State income tax nonresident returns for 1971, 1972 and 1973

on which he reported income from his activities as a vocal instructor. Petitioner did not file unincorporated business tax returns for 1971, 1972 and 1973 on the advice of his accountant.

2. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner asserting unincorporated tax due of \$1,974.79, plus penalty and interest for 1971, 1972 and 1973, along with an explanatory Statement of Audit Changes on which the income from petitioner's activities as a vocal instructor was held subject to unincorporated business tax.

3. Petitioner, Martin Sobel, is a self-employed vocal instructor, rendering services under the "stage name" of Martin Lawrence. His clients consist primarily of individuals within the entertainment industry who incur vocal problems.

4. Petitioner's services are frequently obtained through the recommendation of an otolaryngologist, a medical doctor specializing in disorders of the ear, nose and throat. Petitioner provides vocal instruction for purposes of therapy and rehabilitation, as well as the theory and application of remedial vocal skills.

5. Petitioner, while a practicing professional singer, obtained his knowledge, skills and expertise through twelve years of private instruction. Petitioner contended that the type of private instruction needed in his field of endeavor was unavailable at any college, university or other educational institution.

6. Petitioner maintains a studio in New York City and at his home in New Jersey. Occasionally, petitioner is called on to visit his clients "on location", where he renders remedial instruction to correct a particular vocal problem.

7. Petitioner's income during 1971, 1972 and 1973 was derived from fees charged for private instruction rendered solely by him. He did not have any assistants, and capital was not a material income producing factor.

8. Petitioner is renowned for his accomplishments within the entertainment industry and has written a book, How to Be a Pop Singer, which subsequently was retitled, There's Gold in Your Voice, -- Dig It. In addition, petitioner's name has been mentioned in various articles published by TV Guide and Life magazines.

9. Petitioner does not hold a teaching license and has not taken any education courses. He maintains that a teaching license or education courses are not required, or needed, for the private instructional type of services that he provides to his clients.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Martin Sobel, during 1971, 1972 and 1973 constituted the practice of the profession of teaching, and the income derived therefrom is not subject to unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That issues II and III are moot by virtue of Conclusion of Law "A" of this decision.

C. That the petition of Martin Sobel is granted and the Notice of Deficiency issued February 24, 1976 is cancelled.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER