

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Viola P. Sylbert :  
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, 1972 & 1973. :

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State of New York  
County of Albany

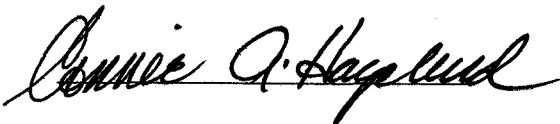
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Viola P. Sylbert, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

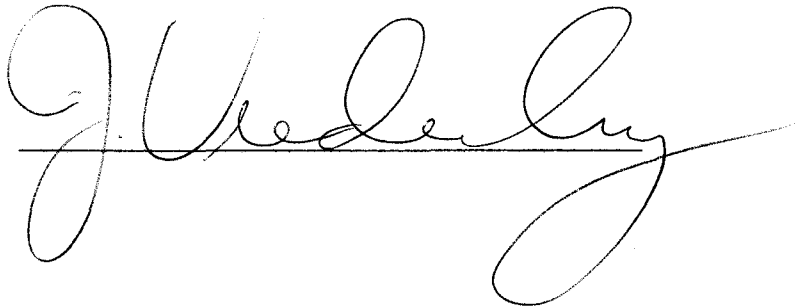
Viola P. Sylbert  
130 East 63rd St.  
New York, NY 10021

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  
6th day of November, 1981.





STATE OF NEW YORK  
STATE TAX COMMISSION

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Viola P. Sylbert :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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the Years 1971, 1972 & 1973.

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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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Robert S. Raum the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert S. Raum  
122 East 42nd St. - Rm. 3000  
New York, NY 10017

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  
6th day of November, 1981.

*Annice A. Stegeland*

*J. Vredenburg*

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

November 6, 1981

Viola P. Sylbert  
130 East 63rd St.  
New York, NY 10021

Dear Ms. Sylbert:

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  
Robert S. Raum  
122 East 42nd St. - Rm. 3000  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
VIOLA P. SYLBERT	:	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.	:	

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Petitioner, Viola P. Sylbert, 130 East 63rd Street, New York, New York 10021, 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. 21929).

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 May 7, 1981 at 9:15 A.M. Petitioner appeared with Robert S. Raum. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUES

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

II. Whether penalties imposed pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law should be abated.

FINDINGS OF FACT

1. Petitioner, Viola P. Sylbert, filed New York State income tax resident returns for the years 1971, 1972 and 1973, whereon she variously described her

occupation as "free designer & publicist" (1971) "designer" (1972), and "designer - R.T.W." (1973). On each of said returns petitioner reported "business income" derived from her designing activities. She did not file an unincorporated business tax return for any of said years at issue.

2. On February 18, 1975 the Audit Division issued a Statement of Audit Changes to petitioner wherein the income derived from her designing activities during the years 1971, 1972 and 1973 was held subject to the imposition of unincorporated business tax. Accordingly, a Notice of Deficiency was issued against petitioner on February 27, 1978 asserting unincorporated business tax of \$3,532.09, penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law for failure to file unincorporated business tax returns, failure to pay the tax determined to be due, and underpayment of estimated tax, respectively, of \$1,731.92, plus interest of \$1,139.50, for a total due of \$6,403.51.

3. During the years at issue petitioner was a self-employed fashion designer of women's readywear apparel such as dresses, sportswear, furs, sweaters, outerwear and rainwear. She contended that her activities engaged in as such constituted the practice of a profession exempt from the imposition of unincorporated business tax pursuant to section 703(c) of the Tax Law.

4. As a fashion designer petitioner provided design ideas to manufacturers on both a formal and informal contractual basis. She was compensated for her services by a flat fee which was paid as either a lump sum or prorated on a monthly basis.

5. Petitioner earned a Bachelor of Arts degree in history and fine arts from New York University, Washington Square College. Subsequently, she received a Master of Science degree in retailing from New York University, School of Retailing. Additionally, she received a Design Certificate from Pratt Institute

and has completed various design related courses at The New School, Fashion Institute of Technology and the Traphagen School of Fashion.

6. Petitioner has completed apprenticeships in factories and mills both here and abroad.

7. Petitioner has enjoyed membership in several fashion industry trade organizations, none of which provided governing rules or regulations for the industry or subjected members to a code of ethics or conduct.

8. Petitioner has served as a critic and lecturer at various fashion schools and has written fashion related articles for trade journals.

9. Petitioner contended that a fashion designer must have special knowledge of the history of fashion, anatomy, color, print design, textiles, current events and the psychology of dress.

10. No licensing requirement exists for entrance into the field of fashion design.

11. Petitioner did not argue that the vocation of fashion design should be exempt from the unincorporated business tax, but rather she believes that only those fashion designers who possess as extensive a background and education as she are professionals which should be exempt from the tax at issue herein.

12. Capital was not a material income-producing factor in petitioner's business and more than 80 percent of petitioner's gross income for the taxable years at issue was derived from personal services rendered.

13. Petitioner failed to provide evidence to show that she had reasonable cause for failing to file unincorporated business tax returns for the years at issue.

CONCLUSIONS OF LAW

A. That the term other profession includes any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it.

Although petitioner's activities as a fashion designer required special knowledge and skills, the application and nature of these attributes did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of petitioner, Viola P. Sylbert, during the years 1971, 1972 and 1973 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Accordingly, the income derived therefrom is subject to the imposition of unincorporated business tax pursuant to section 701 of the Tax Law.

C. That the penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law are hereby sustained.

D. That the petition of Viola P. Sylbert is denied and the Notice of Deficiency dated February 27, 1978 is sustained, together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION

*James W. Tully*  
PRESIDENT

*Frank R. Koenig*  
COMMISSIONER

*Mark J. Jankel*  
COMMISSIONER