

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Karen W. Worth

:

:

: 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 1972 - 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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Karen W. Worth, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Karen W. Worth
19 Henry St.
Orangeburg, NY 10962

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
3rd day of July, 1981.

Carrie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Karen W. Worth :

: 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 1972 - 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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Louis J. Glazier the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis J. Glazier
2582 Erie Boulevard East
Syracuse, NY 13224

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
3rd day of July, 1981.

Arnie A. Haglund

J. Vredenburg

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

July 3, 1981

Karen W. Worth
19 Henry St.
Orangeburg, NY 10962

Dear Ms. Worth:

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
Louis J. Glazier
2582 Erie Boulevard East
Syracuse, NY 13224
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
KAREN W. WORTH : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1972 :
and 1973.

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on December 9, 1980 at 9:15 A.M. Petitioner, Karen W. Worth, appeared by Louis J. Glazier, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

Whether the income derived by petitioner from her activities as a sculptor was subject to unincorporated business tax.

1. Petitioner, Karen W. Worth, timely filed New York State combined income tax returns for the years 1972 and 1973 in which she indicated her occupation to be a self employed sculptor and designer. She did not file unincorporated business tax returns for said years.

2. The Audit Division contended that petitioner's income was derived from the carrying on of an unincorporated business. A Notice of Deficiency was

issued April 11, 1977 for the years 1972 and 1973 in the amount of \$1,289.09 in unincorporated business tax, plus \$558.74 in penalty and \$334.79 in interest, for a total due of \$2,182.62.

3. Petitioner, Karen W. Worth, was educated at Philadelphia's Tyler Art School, Temple University, and the Academy of Fine Arts and later in Paris, France, at the Academy of de la Grande Chaumier. She was a fellow of the National Sculpture Society and received many important international awards and commissions. The petitioner's work has been shown at Smithsonian Institution and Oxford University and many prestigious art galleries.

4. All of petitioner's gross income was derived from the sale of works of art to organizations such as Wittnauer Precious Metal Guild, Judaic Heritage Society, The Longines Symphonette Society and Society Commemorative de Femmes Celebres.

The petitioner is commissioned by organizations as those stated above to produce a plaster model of a given subject matter. Though given the subject matter by the organization, the petitioner has the artistic freedom in creating her own design, subject to approval of the people who commissioned her. Petitioner upon turning over the art work to the organization, also turned over the control of its use.

The organization would then take the art work to a mint for use in making metal dies, and eventually producing coins or medals. The organizations would then dispose of the coins or medals as they considered appropriate.

5. Petitioner maintains a studio in her home in Orangeburg, New York. All of petitioner's gross income was derived from the sale of the works of art which she created. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That "there is no doubt then that an artist may be a professional within the meaning of the statute. But it does not necessarily follow that all income earned by artist qualifies for the professional exemption. The final question, in other words, is not whether the taxpayer is an artist, but rather whether the particular activities he is engaged in constitute the "practice of [a] profession" as opposed to a purely commercial or business enterprise." (Koner v. Procaccino, 383 N.Y.S.2d 295).

B. That the activities performed by petitioner, Karen W. Worth, as a sculptor constituted a business enterprise, since the petitioner's activities consisted entirely of the creation of art work used in the production of coins or medals for business purposes. That such activities constitute the carrying on of a taxable unincorporated business rather than the non-taxable practice of a profession within the meaning of section 703(c) of the Tax Law.

C. That the petition of Karen W. Worth is denied in all respects and the Notice of Deficiency dated April 11, 1977 is sustained.


DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER