

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sarah Baxt :
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 1973 - 1975. :
AFFIDAVIT OF MAILING

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Sarah Baxt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sarah Baxt
420 E. 51st St.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of August, 1982.

James A. Haglund

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sarah Baxt :

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 1973 - 1975. :

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Albert A. Avallon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Albert A. Avallon
Avallon, Avallon & Avallon
225 W. 34th St.
New York, NY 10001

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
4th day of August, 1982.

Annina A. Hayward

J. Vredenburg

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

August 4, 1982

Sarah Baxt
420 E. 51st St.
New York, NY 10022

Dear Ms. Baxt:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Albert A. Avallon
Avallon, Avallon & Avallon
225 W. 34th St.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SARAH BAXT
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1973,
1974 and 1975.

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DECISION

Petitioner, Sarah Baxt, 420 East 51st Street, New York, New York 10022, 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 1973, 1974 and 1975 (File No. 29041).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1981 at 9:15 A.M. Petitioner appeared by Avallon, Avallon & Avallon (Albert A. Avallon, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as an interior decorator constitutes the practice of a profession.

II. Whether petitioner's failure to file unincorporated business tax returns for 1973, 1974 and 1975 was due to reasonable cause.

FINDINGS OF FACT

1. Petitioner Sarah Baxt did not file unincorporated business tax returns for 1973, 1974 and 1975.

2. On May 19, 1977, the Audit Division issued a Statement of Audit Changes to petitioner which asserted unincorporated business tax on the ground

that her activities as an interior designer were subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on November 12, 1979 for unincorporated business tax of \$664.73, plus section 685, subdivisions (a)(1) and (a)(2) penalty and interest of \$485.21, for a total of \$1,149.94.

3. Petitioner Sarah Baxt was born and raised in a family of interior decorators and designers. In the early 1920's she studied decorating and design at the Art Institute in Chicago. In addition she attended school and also took private lessons in oil painting and fine art.

Petitioner Sarah Baxt has been engaged as an interior decorator and designer for a period in excess of fifty (50) years. Petitioner coordinates furniture, tapestries, linens, rugs, paintings and sculptures for private homes, and, on occasion for executive suites and hotels. She advises her clients on furniture arrangement, quality and integration into the artistic motif which is concerned.

4. Petitioner obtained her clientele through recommendation from satisfied customers.

5. Petitioner is neither licensed by nor a member of a society which sets professional standards for interior decorators. She does not possess a degree in art.

6. Capital is not a material income-producing factor in petitioner's activity.

7. Petitioner did not file unincorporated business tax returns in reliance on the advice of her accountant.

CONCLUSIONS OF LAW

A. That the activities of petitioner Sarah Baxt as an interior decorator and designer for the subject years although requiring special knowledge,

experience and artistic ability, do not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703, subdivision (c) of the Tax Law. There is no indication in the record that an interior decorator and designer is controlled by standards of conduct, ethics, malpractice liability or long-term educational background generally associated with a degree in an advanced field of science or learning. (Matter of Rosenbloom v. State Tax Commission, 44 A.D. 2d 69).

B. That petitioner Sarah Baxt's failure to file New York State unincorporated business tax returns for 1973, 1974 and 1975 was due to reasonable cause and not due to willful neglect, and, accordingly, penalties asserted pursuant to section 685, subdivisions (a)(1) and (a)(2) of the Tax Law are cancelled.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency issued November 12, 1979 to be consistent with the Conclusions of Law determined heretofore; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as modified, is sustained, together with such interest as may be legally due and owing.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER