

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Jerrold Simon

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

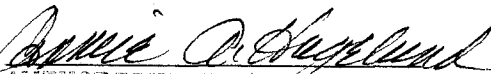
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Jerrold Simon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerrold Simon
397 Pacific St.
Brooklyn, NY 11217

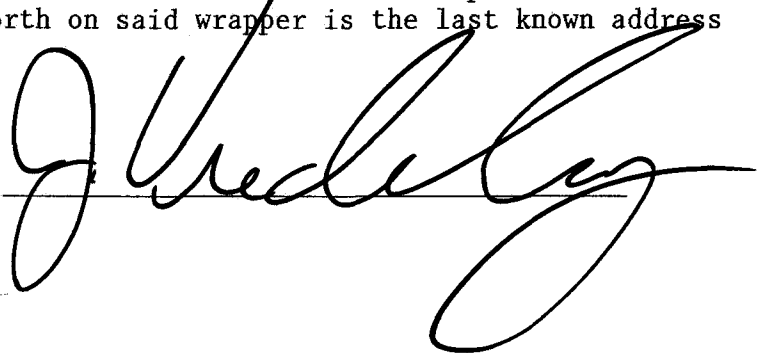
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 205



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Jerrold Simon

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

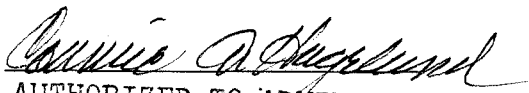
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Louis Rosenstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis Rosenstein
Louis Rosenstein & Co.
98 Cutter Mill Rd.
Great Neck, NY 11021

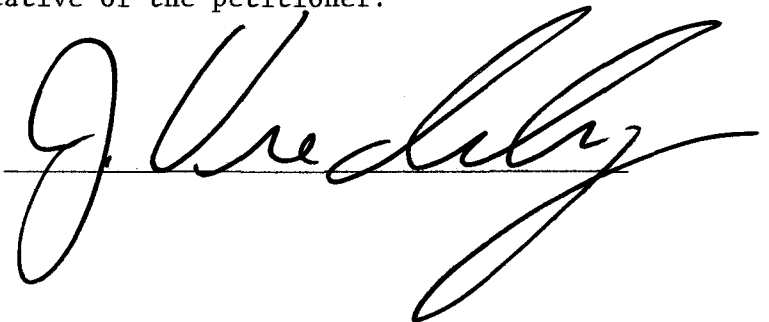
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 100



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

October 6, 1982

Jerrold Simon
397 Pacific St.
Brooklyn, NY 11217

Dear Mr. Simon:

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
Louis Rosenstein
Louis Rosenstein & Co.
98 Cutter Mill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JERROLD SIMON	:	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, Jerrold Simon, 397 Pacific Street, Brooklyn, New York 11217, 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. 19197).

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 February 8, 1980 at 10:45 A.M. Petitioner appeared by Louis Rosenstein, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Jerrold Simon's activities as a graphic designer, constituted the practice of a profession exempt from the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Jerrold Simon and Barbara Simon, his wife, timely filed New York State income tax resident returns for the subject years. Petitioner, on said returns, listed his occupation as a commercial artist; however, he did not file unincorporated business tax returns.

2. On February 10, 1977, the Audit Division issued a Statement of Audit Changes to petitioner which asserted unincorporated business tax on the ground that petitioner's activities as a commercial artist - graphic designer was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on March 28, 1977 for unincorporated business tax of \$336.05 for 1971; \$494.18 for 1972 and \$497.86 for 1973, for a total tax of \$1,328.09 plus accrued interest.

3. Petitioner Jerrold Simon attended the University of Texas and received a Bachelor of Fine Arts Degree; he also attended the University of California, Berkley, and received a Master of Arts Degree. In addition, petitioner attended the Advanced School of Commercial Design at San Antonio, where he undertook private study under the tutelage of Warren Hunter. Petitioner, during his attendance at above institutions, took specialized instructions in painting, architectural art and commercial design.

4. Petitioner contended that his activities in graphic design involved the planning and creation of visual concepts through the medium of print. That the ultimate execution of his design was executed by "mechanics" who refine the layout, implementing petitioner's basic design.

5. Petitioner's principal activity is the preparation of graphic designs for corporations and nonprofit institutions. The designs executed by petitioner are used by the corporations and nonprofit institutions in the creation of publications which provide general information about their area of interest and concern.

Petitioner was not engaged in counselling businesses in disseminating information for advertisement or promotion of products or services.

Petitioner secures his work through various sources. Some of his work is secured through advertising agencies who seek out artists, such as the petitioner, capable of executing work required by their clients and whom they bill directly and ask the artist for a bill for services rendered. At times, an artist representative, an agent working on a pre-arranged commission, is used to locate suitable clients for petitioner. On occasion, petitioner sells his work by direct negotiation with clients.

In addition, petitioner also derived income during 1971 as an adjunct lecturer at C.U.N.Y., teaching design and calligraphy. Petitioner did not indicate the amount of net income derived from this source.

6. Petitioner's activity as a graphic designer entailed the preparation of logos, symbols and art work for business, educational and charitable institutions.

7. Petitioner's income as a graphic designer was derived from personal services, and capital was not a material income producing factor.

CONCLUSION OF LAW

A. That the term "profession" implies knowledge of some department of science or learning gained by a prolonged course of specialized instruction and study (Matter of Rosenbloom v. State Tax Commission, 44 A.D.2d 69, mot. for lv. to app. den. 34 N.Y.2d 518), that when applied is devoted to public service in the traditional, professional sense (Matter of Koner v. Procaccino, 45 A.D.2d 551, aff'd 39 N.Y.2d 258), as opposed to activities which deal in the field of business itself (Matter of Giordano v. State Tax Commission, 52 A.D.2d 691).

B. That the activities of the petitioner as a graphic designer are not devoted to public service in the traditional, professional sense even though such activities require the application of special skill and knowledge. The

petitioner's occupation consists primarily of preparing graphic designs which are used to promote petitioner's clients themselves or their services (Findings of Fact "5" and "6").

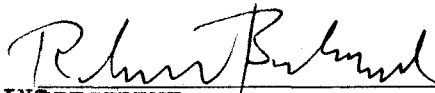
C. That the activities of the petitioner as a graphic designer for the years 1971, 1972 and 1973 do not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law, and the income derived from such activity is subject to the imposition of unincorporated business tax pursuant to section 701(a) of the Tax Law (Matter of Perlman, 63 A.D.2d, 762; Matter of Philip S. Gips, State Tax Commission, February 5, 1981).

D. That the petition of Jerrold Simon is denied and the Notice of Deficiency is sustained.

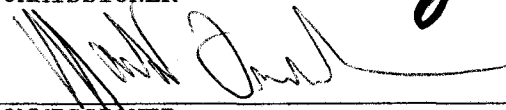
DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


~~ACTING~~ PRESIDENT


COMMISSIONER


COMMISSIONER