

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Jennifer Tipton

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

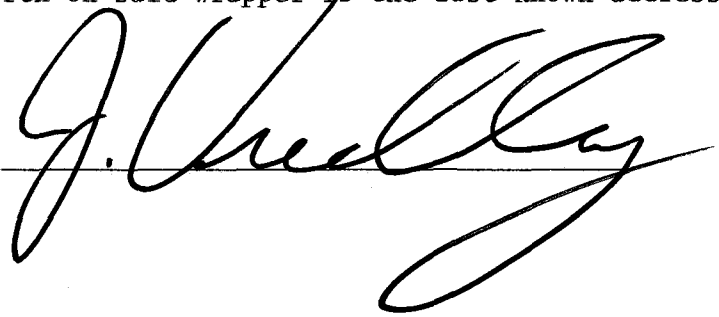

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Jennifer Tipton, the petitioner in the within proceeding,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

Jennifer Tipton
35 East 10th St.
New York, NY 10003

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 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jennifer Tipton :

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 Rubin L. Gorewitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

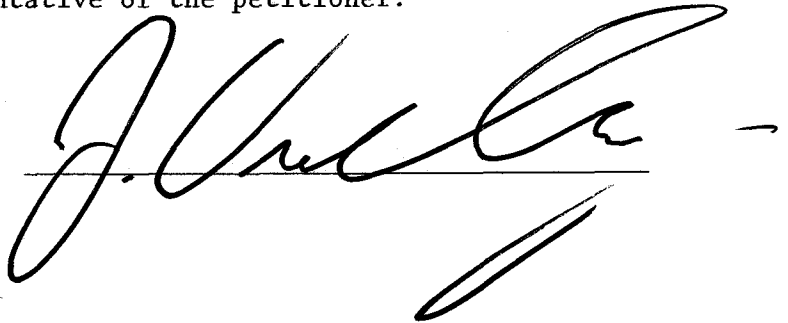
Rubin L. Gorewitz
250 W. 57th St.
New York, NY 10019

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 174



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

October 6, 1982

Jennifer Tipton
35 East 10th St.
New York, NY 10003

Dear Ms. Tipton:

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
Rubin L. Gorewitz
250 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
JENNIFER TIPTON
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.

DECISION

Petitioner, Jennifer Tipton, 35 East 10th Street, New York, New York 10003, 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. 22275).

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 September 22, 1981 at 10:45 A.M. Petitioner appeared with Rubin L. Gorewitz, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether the activities engaged in by petitioner as a light designer constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Jennifer Tipton (hereinafter petitioner) timely filed a New York State Income Tax Resident Return for each of the years 1971, 1972 and 1973, whereon she reported "business income" derived from her activities engaged in as a light designer. She did not file an unincorporated business tax return for any of said years at issue.

2. On January 4, 1977 the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that the income from her "activities as a light designer is subject to the unincorporated business tax". Accordingly, a Notice of Deficiency was issued against petitioner on May 22, 1978 asserting unincorporated business tax for the years 1971, 1972 and 1973 of \$1,059.86, plus interest of \$359.55, for a total due of \$1,419.41.

3. Petitioner claimed exemption from the imposition of unincorporated business tax pursuant to the provisions of both section 703(b) and section 703(c) of the Tax Law. To wit, she claimed to have performed services as an employee, as well as to have been engaged in the practice of the recognized profession of "artist".

4. During the years at issue herein, petitioner was engaged in activities as a light designer for dance and theatrical stage productions. Some of the better known principals she was associated with during such years were the City Center Joffrey Ballet Company, the Pennsylvania Ballet Company and the Houston Ballet Company.

5. As a light designer for stage productions, petitioner was required to draft a light plot, which she did at an office maintained at her residence. In drafting such plot she had to take into consideration such factors as the color of lights, the desired emotional atmosphere and the movement of lights. At times she has worked with as many as six hundred lights, which can require a change on a minute by minute basis. Petitioner always used the lighting equipment supplied by the producer. She did not physically set up the lights, but rather she directed the light design through her light plot. Actual physical movement of the lights was done by electricians. The light plots petitioner designed were unique to each separate production. Subsequent to her

initial design of the lighting, petitioner would visit the production approximately every six weeks as a checking procedure.

6. Petitioner was a member of the United Scenic Artists Local 829. Although she argued that membership in such union was virtually a prerequisite for obtaining work, review of a schedule submitted detailing her activities for the years at issue (Exhibit 1) shows that of the fifty nine (59) principals she worked for, only eleven (11) engaged her services through said union.

7. Petitioner was paid on a fee basis for each production she worked on. Payment was made either through the union or by the production company directly.

8. Petitioner was directed only as to the result to be accomplished. She was not directed as to the details and means by which her light designs were actually accomplished.

9. On occasion, petitioner worked for more than one principal simultaneously.

10. Most of petitioner's principals did not reimburse her for business expenses incurred with respect to their production.

11. United Scenic Artists provided petitioner with a health insurance plan. It also provided a pension plan which was funded by petitioner's principals.

12. Petitioner employed an assistant who worked basically in a secretarial capacity. Such assistant's compensation was paid by petitioner's principals.

13. Petitioner reported her income derived from her light design activities on a Federal Schedule "C".

14. Petitioner's principals did not withhold New York State personal income tax from her compensation.

15. During the hearing held herein, petitioner testified that "United Scenic Artists light designers work free-lance, from production to production."

16. Petitioner argued that light design is a "fine art" since it helps to reveal the emotional picture of a performance.

17. Petitioner graduated from Cornell University with a degree in English. Subsequently, she attended the Polikov Studio for two years in preparation for the examination which she was required to pass for acceptance into the United Scenic Artists union.

18. Petitioner has won several awards for her light designs.

19. There is no governmental body or authority which sets standards or employs a code of ethics controlling the light design vocation.

CONCLUSIONS OF LAW

A. That the evidence is clear and convincing that petitioner's relationship with her principals during the years at issue was that of an independent contractor. Since a bona fide employer-employee relationship was not maintained with petitioner's principals, no exemption from unincorporated business tax is available to her under the provisions of section 703(b) of the Tax Law.

B. That the word "profession" implies attainments in professional knowledge in some department of science or learning. The performing of services dealing with the conduct of business itself does not constitute the practice of a profession even though the services involve the application of specialized knowledge. Although petitioner's activities as a light designer required special knowledge and skills, the application and nature of these attributes do not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

C. That the aforesaid activities of petitioner, Jennifer Tipton, 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 within the meaning and intent of section 701 of the Tax Law.

D. That the petition of Jennifer Tipton is denied and the Notice of Deficiency dated May 22, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 06 1982

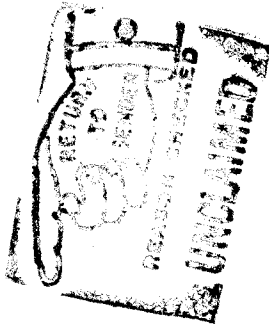

ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



FINAL NOTICE

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Jennifer Tipton
35 East 10th St.
New York, NY 10003

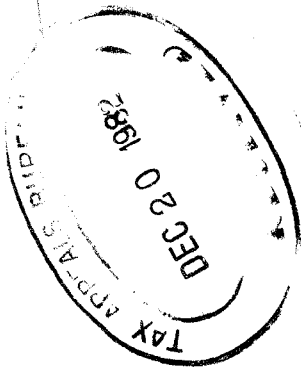
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CERTIFIED

P 230 844 018

MAIL



TA

CLAIM CHECK
No.

☐ HOLD

DATE

10/8/82

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct. 1980

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

October 6, 1982

Jennifer Tipton
35 East 10th St.
New York, NY 10003

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Rubin L. Gorewitz
250 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JENNIFER TIPTON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1971,	:	
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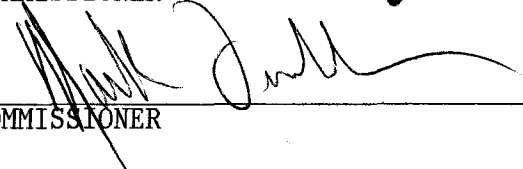
DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER