

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Paul & Marie B. Rauch	: : : : : :	: : : : : :
		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 Year 1977.		

State of New York
County of Albany

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Paul & Marie B. Rauch, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul & Marie B. Rauch
c/o Seymour Schneidman & Associates
405 Park Ave.
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
6th day of May, 1983.

David Parchuck

Barbara A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul & Marie B. Rauch :
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 Year 1977. :

State of New York
County of Albany

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Bernard Rappaport the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Rappaport
Seymour Schneidman & Associates
405 Park Ave.
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 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 May, 1983.

David Parchuck

Conrad A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Paul & Marie B. Rauch
c/o Seymour Schneidman & Associates
405 Park Ave.
New York, NY 10022

Dear Mr. & Mrs. Rauch:

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
Bernard Rappaport
Seymour Schneidman & Associates
405 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
PAUL AND MARIE B. RAUCH
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1977.

DECISION

Petitioners, Paul and Marie B. Rauch, c/o Seymour Schneidman & Associates, 405 Park Avenue, 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 year 1977 (File No. 30338).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1982 at 1:45 P.M. Petitioners appeared by Seymour Schneidman & Associates (Bernard Rappaport, CPA). The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's services as a television producer were exempt from unincorporated business tax as a profession within the meaning and intent of section 703(c) of the Tax Law.

II. Whether petitioner's income from services as a television producer was exempt from unincorporated business tax as the salary of an employee of a corporation.

FINDINGS OF FACT

1. Petitioners, Paul and Marie B. Rauch, filed a New York State Income Tax Resident Return for 1977.

2. On March 27, 1980, the Audit Division issued a Notice of Deficiency against petitioners in the amount of \$3,318.79, plus interest of \$549.33, for a total due of \$3,868.12 for the year 1977. A Statement of Audit Changes issued December 28, 1979 explained that petitioner's income (all reference to "petitioner" will refer to Paul Rauch only) earned as an independent television producer was considered subject to unincorporated business tax.

3. Petitioner was the producer of a television "soap opera" known as "Another World" under a contract with Young and Rubicam International, Inc. (hereinafter Young and Rubicam) agents for Proctor and Gamble, Inc. Pursuant to the aforesaid contract, petitioner supervised a team of writers, directors and actors, and the technical and production staff. He was involved in scriptwriting and he had to maintain knowledge of current production techniques.

4. Petitioner claimed that his services as a producer constituted a profession similar to that of authors, poets and dramatists who have been held to be exempt from unincorporated business tax under section 703(c) of the Tax Law.

5. Petitioner also claimed that he was a salaried employee of Aceca Productions Corporation ("Aceca") of which petitioner was sole stockholder. According to petitioner's representative the contract for petitioner's services was actually between Aceca and Young and Rubicam. As evidence of said contract petitioner introduced an unsigned letter from Young and Rubicam to Aceca confirming an agreement for petitioner's services. No original contract nor other signed documents were offered in evidence. Aceca did not withhold taxes from petitioner and no W-2 form was submitted. Moreover, petitioner filed a Federal Schedule C, Profit or (Loss) From Business or Profession for the year in issue. Additionally, petitioner did not make himself available to testify

as to any of the aforementioned matters. Petitioner was given an opportunity after the hearing to submit any documents substantiating his claim of employee status but failed to do so.

CONCLUSIONS OF LAW

A. That section 703(c) of the Tax Law provides:

"(c) Professions. -- The practice of law, medicine, dentistry or architecture, and the practice of any other profession in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or the members of the partnership or other entity, shall not be deemed an unincorporated business."

B. That 20 NYCRR 203.11(b)(1)(iv) provides:

"(iv) Musicians and artists are also recognized as professions (sic) by the Tax Commission. However, an activity which, for example, consists of executing drawings or illustrations for commercial advertising purposes, or the production of musical or dramatic shows, or the creation of advertising set to music is not a professional activity since it deals with the conduct of business itself."

C. That petitioner's activities as a television producer dealt with the conduct of business itself and was not a professional activity. Therefore, the income derived therefrom is subject to unincorporated business tax. Since it is not possible to determine from the record what portion of petitioner's income was derived from petitioner's writing activities, all of petitioner's income from his services as a television producer is subject to unincorporated business tax.

D. That a single unsigned letter is not sufficient evidence to show that petitioner was an employee of Aceca. Inasmuch as petitioner failed to avail himself of the opportunity to present more convincing evidence of his claim, he has failed to meet his burden of proving that his services were those of an employee and therefore, his income was not subject to unincorporated business tax.

E. That petitioner Marie B. Rauch's name should be removed from the Notice of Deficiency dated March 27, 1980, since she was not engaged in any unincorporated business activities.

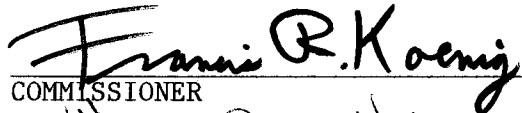
F. That the petition of Paul and Marie B. Rauch is granted to the extent shown in Conclusion of Law "E", above and is in all other respects denied. The Notice of Deficiency issued March 27, 1980 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER