

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Jean Harcourt Powell :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Unincorporated :  
Business Tax under Article 23 of the Tax Law for :  
the Year 1977.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of December, 1984, he served the within notice of Decision by certified mail upon Jean Harcourt Powell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

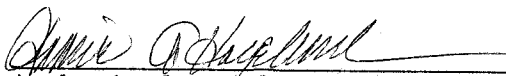
Jean Harcourt Powell  
285 Central Park West Apt. P-H W  
New York, NY 10024

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
14th day of December, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Jean Harcourt Powell : AFFIDAVIT OF MAILING

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Business Tax under Article 23 of the Tax Law for :  
the Year 1977.

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State of New York }  
ss.:  
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of December, 1984, he served the within notice of Decision by certified mail upon David Rosenzweig, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Rosenzweig  
271 Madison Ave.  
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
14th day of December, 1984.

David Parchuck

James A. Hapell

Authorized to administer oaths  
pursuant to Tax Law section 174

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

December 14, 1984

Jean Harcourt Powell  
285 Central Park West Apt. P-H W  
New York, NY 10024

Dear Ms. Powell:

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) 690 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
David Rosenzweig  
271 Madison Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JEAN HARCOURT POWELL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1977.	:	

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Petitioner, Jean Harcourt Powell, 285 Central Park West, Apt. P-H W, New York, New York 10024, 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. 39835).

A formal hearing was held before Charles Reynolds, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 26, 1984 at 1:15 P.M. Petitioner appeared by David Rosenzweig, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities as an artist representative constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Jean Harcourt Powell, filed a New York State Income Tax Resident Return for the year 1977 wherein she reported business income of \$231,729.00 as an "Artist Representative". She did not file an unincorporated business tax return for said year.

2. On July 21, 1981, the Audit Division issued to petitioner a Statement of Audit Changes asserting New York State and City personal income taxes of

\$3,504.88, unincorporated business tax of \$13,193.90, penalty, pursuant to section 685(b) of the Tax Law, of \$834.94, and interest of \$4,635.41, for a total due of \$22,169.13. The statement was issued on the grounds that:

"Under authorization of Federal Law (Section 6103(d) of the Internal Revenue Code), we have received notification of Federal audit changes and the following deficiency is based on failure to report such changes.

The income from your activities as Artist Representative is subject to the unincorporated business tax."

Accordingly, a Notice of Deficiency was issued on July 23, 1982. The adjustments for New York State and City personal income taxes are attributable to federal adjustments conceded to by petitioner and are not at issue in this proceeding.

3. Petitioner worked as a coordinator between Janice Ian (hereinafter "Ian"), a professional singer and song writer, and Ian's booking agent. Ian would get a telephone call from the agent with respect to a proposed performance. Ian would refer the agent to petitioner who would obtain the necessary details and then report back to her. A discussion would then take place as to the amount of fee for the engagement and whether or not the acceptance of the booking would further Ian's career. Ian had the final say on theatrical bookings and personally signed all contracts.

4. Petitioner had an office at 850 Seventh Avenue, New York City. The lease for the office was in petitioner's name in order to (1) protect Ian's assets; (2) protect against lawsuits; and (3) avoid other possible liabilities. Ian maintained a larger office next to petitioner's where she kept her equipment, guitars, piano, and albums and where she wrote songs. The record does not

indicate who held the lease on this office. Ian hired a secretary who performed services on behalf of Ian and was paid a salary of \$15,600.00.<sup>1</sup>

5. Petitioner submitted a copy of Federal Schedule C, Profit or (Loss) from Business or Profession (Sole Proprietorship), on which she indicated that her Employer Identification number was 13-6704170 and that she filed an Employer's Quarterly Federal Tax Return, Form 941. Said Schedule C listed the following items of income and expense:

Gross receipts		\$345,760 <sup>2</sup>
Less: Depreciation		\$ 3,492 <sup>3</sup>
Taxes on business property		1,407
Rent on business property		6,480
Repairs and maintenance		2,233
Salaries and wages		15,600
Insurance		155
Legal and professional fees		750
Commissions		50
Other business expenses:		
Office expense, stationery, postage	\$ 3,662	
Traveling and Entertaining	49,412	
Telephone	9,813	
Employee expenses	7,475	
Petty cash expenses	3,420	
Artists advances	11,364	
Promotion	1,242	
Bank charges	62	
Business gifts and X-mas expense	1,774	
Dues and subscriptions	94	
Professional expenses	1,856	
Total	\$90,174	
Less: Reimbursed expenses	6,310	
Total other business expenses		\$ 83,864
Total deductions		\$114,031
Net Profit		\$231,729

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<sup>1</sup> This amount was deducted by petitioner as salaries and wages on Federal Schedule C. It is assumed that petitioner filed Federal Form 941 (Finding of Fact "5", infra) to report the amount of income and social security taxes that were withheld from the salary paid to the secretary.

<sup>2</sup> The amount for gross receipts of \$345,760.00 represents the commission paid by Ian to petitioner (Finding of Fact "6", infra).

<sup>3</sup> Depreciation expense was taken on stereo equipment, office furniture and fixtures, and an office copier.

Petitioner asserted that Schedule C was filed for cosmetic purposes because "[i]f we took our other deductions on Schedule A [itemized deductions] it would just stick out like a sore thumb...it would look ridiculous, \$114,000.00, we would have an audit every day".

6. Ian paid petitioner a commission of twenty percent based on each booking contract. The commission was paid in part to reimburse petitioner for some of the expenses she incurred on behalf of Ian, such as rent, salaries, and travel. Petitioner was given a copy of each contract after it was executed, so that she could determine the amount of her commission. When monies were received from said engagements, Ian's accountant deposited the receipts into Ian's account and then paid petitioner. No income or social security taxes were withheld on the commissions paid by Ian.

7. During the year in issue, petitioner made payments to a self-employed retirement plan (Keogh) and paid self-employment tax on the amount of net profit shown on Federal Schedule C.

8. Petitioner asserted that (1) there was an employee-employer relationship between Ian and herself; (2) all income she received was from Ian; and (3) she was supervised, directed and controlled by Ian; however, except for the testimony given at the hearing herein by petitioner's representative (petitioner did not personally appear and testify), petitioner did not submit any evidence to support items (1) and (3).

#### CONCLUSIONS OF LAW

A. That petitioner, Jean Harcourt Powell, failed to sustain her burden of proof imposed by section 689(e) of the Tax Law to show that sufficient direction and control was exercised over her activities by Janice Ian so as to create an employer-employee relationship within the meaning and intent of section 703(b)

of the Tax Law and 20 NYCRR 203.10. Therefore, petitioner's activities as an artist representative constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

B. That the petition of Jean Harcourt Powell is denied and the Notice of Deficiency issued on July 23, 1982, is sustained together with such additional interest as may be owing.


DATED: Albany, New York

DEC 14 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER