

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LAURENCE LUSTIG

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1965

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 7th day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Laurence Lustig

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Laurence Lustig  
10 Hendrick South  
Irvington-on-Hudson, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

7th day of August , 1972 .

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**August 7, 1972**

**Laurence Lustig  
10 Hendrick South  
Irvington-on-Hudson, New York**

**Dear Mr. Lustig:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690 & 722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 Months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours

  
**Paul B. Coburn**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LAURENCE LUSTIG	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1965.	:	

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Petitioner, Laurence Lustig, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1965. (File No. 46209946). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on June 14, 1971, at 3:00 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

#### ISSUE

I. Did petitioner, Laurence Lustig's activities as a magazine and book designer and design consultant during the year 1965 constitute the practice of a profession?

II. Did petitioner, Laurence Lustig, have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1965?

#### FINDINGS OF FACT

1. Petitioner, Laurence Lustig, and his wife filed a New York State income tax resident return for the year 1965. He did not file a New York State unincorporated business tax return for said year.

2. On December 16, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Laurence Lustig, imposing unincorporated business tax upon the income received by him from his activities as a magazine and book designer and design consultant during the year 1965. It also imposed a penalty of \$98.61 for failure to file an unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$556.21.

3. Petitioner, Laurence Lustig's business activities as a magazine and book designer and design consultant during the year 1965 consisted of the preparation of art work for books and magazines in the form of design and layout or illustration. In the course of his work he was given books or magazines to read. He then made sketches and renderings for the editors to show how the material could best be presented in printed form, considering illustrative and graphic treatment. In some cases he was commissioned to carry out the illustration or design. He did not do any work for advertising agencies. His work product was not used for the advertising of commercial products in books or magazines.

4. Petitioner, Laurence Lustig, received a B.S. degree with a major in communications from the College of Arts and Sciences of New York University in 1938. He completed three years of postgraduate work at Pratt Institute as a full-time student in the art school. While there he was trained in drawing, painting, lettering, composition, layout and illustration. He also attended classes at the Art Students League, the Brooklyn Museum Art School and the Phoenix Art Institute. He received 22 awards for editorial and graphic design

of magazines and books from professional societies, trade associations and magazines. These included awards from the American Institute of Graphic Arts, the Art Directors Club of New York, the Society of Publication Designers, the American Water Color Society, the Educational Press Association of America, Printing Industries of America, the American Business Press, and others. He was elected to membership and participated in the activities of various professional societies. He wrote articles on design which appeared in Book Production Industry Magazine, Business Management Magazine, American Home Magazine and Better Editing Magazine. He lectured on magazine design before various groups. He taught in the evening school of Pratt Institute for four years.

5. During the year 1965 petitioner, Laurence Lustig's income as a magazine and book designer and design consultant was derived solely from personal services rendered. Capital was not a material income producing factor.

6. Petitioner, Laurence Lustig, was advised by his accountant that he was not required to file a New York State unincorporated business tax return for the year 1965.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner, Laurence Lustig, as a magazine and book designer and design consultant during the year 1965, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of petitioner, Laurence Lustig, during the year 1965 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Laurence Lustig, had reasonable cause for not filing a New York State unincorporated business tax return for the year 1965 and therefore the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Laurence Lustig is granted to the extent of canceling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1965 and the Notice of Deficiency issued December 16, 1968 is reduced from \$556.21 to \$457.60 together with such interest as may be due from December 16, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
*August 7, 1972*

STATE TAX COMMISSION

*Norman Gelman*  
COMMISSION

*Bruce Massey*  
COMMISSION

*William Koenig*  
COMMISSION