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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

N. B. AND C. ASSOCIATES

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

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

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 21st day of February , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon N. B. and C.
Associates (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: N. B. and C. Associates
Hotel Statler Hilton
Suite 233
Buffalo, New York 14202
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

21st day of February , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

N. B. AND C. ASSOCIATES

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

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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 21st day of February , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Thomas P.
Batt, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Thomas P. Batt, C.P.A.

887 Park Avenue
North Tonawanda, New York 14120

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

21st day of February , 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 21, 1973

**M. B. and C. Associates
Hotel Statler Hilton
Suite 233
Buffalo, New York 14202**

Gentlemen:

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

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
N. B. AND C. ASSOCIATES	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1965.	:	

N. B. and C. Associates petitioned for a redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the year 1965.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York on June 25, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Thomas P. Batt, C.P.A., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Where the partnership business does not reimburse partners for their out-of-pocket expenses for partnership business do such expenses decrease income from the unincorporated business?

II. Are reporters who do contract, free-lance, and substitute court reporting entitled to a professional exemption?

FINDINGS OF FACT

1. Petitioner, N. B. and C. Associates timely filed a New York State unincorporated business tax return for the year 1965.

2. A Notice of Determination of deficiencies in unincorporated business tax for the year 1965 was issued on November 24, 1969, against the petitioner under File No. 3271.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. N. B. and C. Associates contended that it could decrease the income of its business by the unreimbursed out-of-pocket partnership expenses of its partners.

5. The partner's out-of-pocket expenses were ordinary and necessary and were for partnership business in setting up an office in Syracuse. These expenses were deducted by the partners on their personal income tax returns as business expenses. The only source of business earnings or income of any of the partners was from their work in N. B. and C. Associates. These expenses necessarily reduced each of the partners individual incomes from the unincorporated business of N. B. and C. Associates.

6. The taxpayer consisted of three shorthand reporters who did contract work, free-lance work, and substitute work in the courts. They contended that they were exempt as professional from the unincorporated business tax. The reporters worked regularly at shorthand court reporting but there was no evidence that any of them had passed any examination for reporting by any civil service agency, or been certified as shorthand reporters.

CONCLUSIONS OF LAW

A. The unreimbursed ordinary and necessary expenses of all of its partners on partnership business decreased the amount of their income from the partnership or unincorporated business of N. B. and C. Associates. These expenses paid on partnership business by the partners would necessarily decrease income from or of the unincorporated business. The expenses decreased the taxable income of the unincorporated business.

B. In the absence of proof that any of the reporters had passed a civil service test, as a shorthand reporter, or been accredited as a certified shorthand reporter, none of them are entitled to professional exemption under the unincorporated business tax law.


C. The determination of the deficiency in unincorporated business tax against the taxpayer, as modified above, is sustained.

D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 21, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER