

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS E. D'ELIA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income and :
Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~1967~~ 1967.:
~~1967~~

State of New York
County of Albany

Bruce Batchelor , 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 4th day of March , 1977, he served the within
Notice of Decision by (certified) mail upon Francis E. D'Elia

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Francis E. D'Elia
One West Street
New Hyde Park, New York 11040

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)~~
~~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

4th day of March , 1977.

Bruce Batchelor

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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. Francis E. D'Elia
One West Street
New Hyde Park, New York 11040

Dear Mr. D'Elia:

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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANCIS E. D'ELIA	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 & 23 of the Tax Law for	:	
the Years 1967.	:	

Petitioner, Francis E. D'Elia, residing at One West Street, New Hyde Park, New York 11040, has filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1967. (File No. 78848382).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 13, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether the income of the petitioner, Francis D'Elia, received as a physicist-mathematician and consultant is subject to unincorporated business tax?

1. Petitioner, Francis E. D'Elia, and his wife, filed a New York State resident return for the year 1967. He did not file an unincorporated business tax return for said year.

2. On November 29, 1971, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Francis E. D'Elia, imposing unincorporated business tax upon his activities as a consultant during the year 1967. The Statement of Audit Changes included adjustments pertaining to the personal income tax portion of the petitioner's return, this is not being contested by the petitioner, Francis E. D'Elia. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$814.41.

3. During the year 1967, the petitioner, Francis E. D'Elia, performed services as a analyst, physicist-mathematician and consultant. The petitioner was employed by independent consultant firms, such as, Ewing Technical Design, Hamilton Research Associates and the Associated Designs. The petitioner, Francis E. D'Elia, would be assigned by an above said firm to work on a project of one of their clients. The work would be performed at the client's premises, laboratory facilities or offices, within a specific time period. The work on the particular project is administratively supervised by the client of the petitioner's employer, as to the research conducted and effort expended. The work performed by the petitioner is performed individually or as a member of a team of specialists.

4. During the time of the petitioner's employment with any said principal, he received no other compensation from any other principal and only worked for the one principal.

5. During the year 1967 the petitioner, Francis E. D'Elia, received a salary of \$10,104.00 plus per diem expenses of \$672.00 while employed by Ewing Technical Design; he received a salary and other compensation in the sum of \$10,658.55 from Hamilton Research Associates, and compensation in the sum of \$6,312.31 from Associated Design. Federal and state income taxes and social security tax were withheld from the salary paid to him. He was not covered by any retirement or health plans of said principals.

CONCLUSIONS OF LAW

A. That the amount of control and restrictions imposed upon the petitioner, Francis E. D'Elia, by the above said principals created an employee-employer relationship within the meaning and intent of section 703(b) of the Tax Law.


B. That the petitioner's activities during the year 1967 did not constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

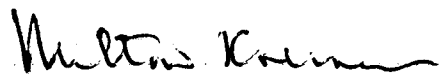
C. That the petition of Francis E. D'Elia is granted to the extent of cancelling the unincorporated business tax and interest related thereto which was included in the Notice

of Deficiency dated November 29, 1971 and except as so granted,
the petition is in all other respects denied.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER