

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Jay H. & Mina Drucker :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 22 & 23 of the Tax Law
for the Years 1972 & 1973. :

State of New York

County of Albany

Jay Vredenburg, 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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Jay H. & Mina Drucker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

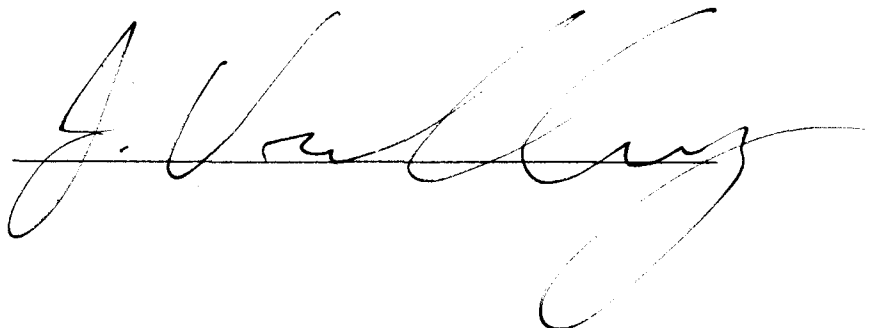
Jay H. & Mina Drucker
17 W. 64th St.
New York, NY 10036

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
11th day of April, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Jay Vredenburg, 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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Julius A. Baylis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

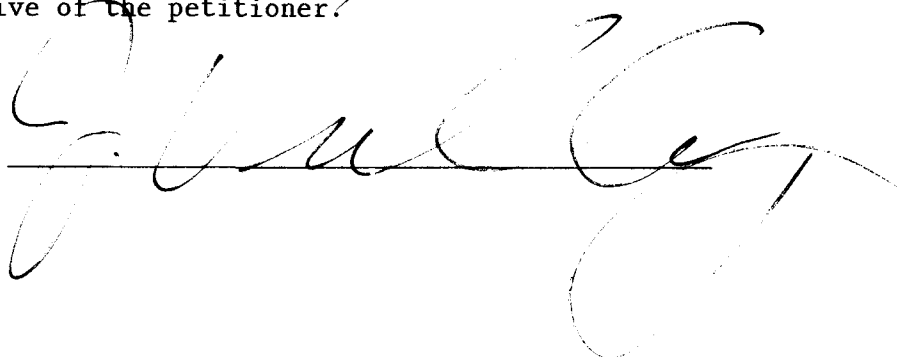
Mr. Julius A. Baylis
1457 Broadway
New York, NY 10036

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
11th day of April, 1980.

Joanne Knapp

A large, stylized handwritten signature, likely of Julius A. Baylis, is written over a horizontal line. The signature is in dark ink and is quite fluid and cursive.

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

April 11, 1980

Jay H. & Mina Drucker
17 W. 64th St.
New York, NY 10036

Dear Mr. & Mrs. Drucker:

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, 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Julius A. Baylis
1457 Broadway
New York, NY 10036
Taxing Bureau's Representative

STATE TAX COMMISSION

1. Petitioners, Jay H. Drucker and Mina Drucker, filed New York State combined income tax resident returns for the years 1972 and 1973, on which

business income was reported from petitioner Jay H. Drucker's activities as an artist. Petitioner Jay H. Drucker filed an unincorporated business tax return for the year 1973, but did not file one for the year 1972.

2. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency along with an explanatory Statement of Audit Changes, holding petitioner's business income for the year 1972 subject to the unincorporated business tax, and imposed penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law. In addition, a credit in favor of both petitioners was granted to reflect an estimated tax payment not reported on the personal tax return filed for the year 1973, and a penalty pursuant to section 685(c) of the Tax Law was imposed. Petitioner Jay H. Drucker solely challenged the finding that his business income earned during the year 1972 was subject to the unincorporated business tax.

3. Petitioner Jay H. Drucker was a self-employed artist during the year 1972, who designed and created brochures, booklets and pamphlets primarily for the travel industry. Petitioner testified that his services were performed strictly to promote the sales or services offered by his clients.

4. Petitioner is a high school graduate and has taken various art courses during the evenings.

CONCLUSIONS OF LAW

A. That the word "profession" implies attainments in professional knowledge in some department of science or learning and not mere skill and application of knowledge. Performing services which deal with the conduct of business itself (including the promotion of sales or services of such business) does not constitute the practice of a profession, even though the services involve the application of a specialized knowledge. Although petitioner's

activities as an artist require special knowledge and skills, the application and nature of these attributes do not constitute a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the income derived from the petitioner Jay H. Drucker's activities as an artist during the year 1972 is subject to the imposition of unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

C. That the petition of Jay H. Drucker and Mina Drucker is denied and the Notice of Deficiency issued February 24, 1976 for the years 1972 and 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER