

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

William P. Rowen :

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 1967 & 1969. :

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 14th day of March, 1980, he served the within notice of Decision by certified mail upon William P. Rowen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

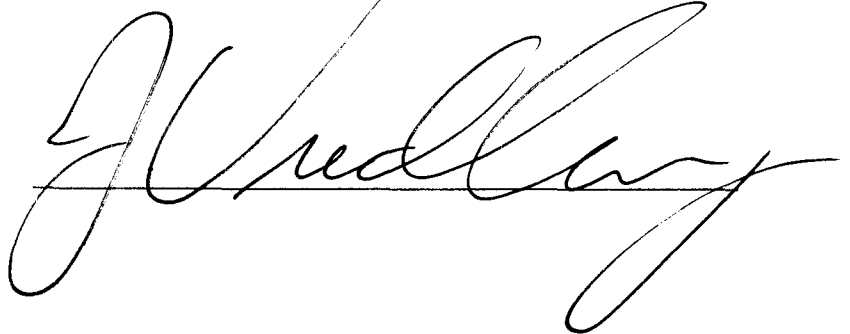
William P. Rowen
215 W. 101st St. Apt. 6-F
New York, NY 10025

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
14th day of March, 1980.

Joanne Knapp



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

March 14, 1980

William P. Rowen
215 W. 101st St. Apt. 6-F
New York, NY 10025

Dear Mr. Rowen:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petitions | : | |
| of | : | |
| WILLIAM P. ROWEN | : | DECISION |
| for Redetermination of Deficiencies or for | : | |
| Refund of Personal Income and Unincorporated | : | |
| Business Taxes under Articles 22 and 23 of | : | |
| the Tax Law for the Years 1967 and 1969 | : | |

Petitioner, William P. Rowen, 215 West 101st Street, Apt. 6F, New York, New York 10025, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1967 and 1969 (File Nos. 00321 and 13630).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 18, 1978 at 2:45 P.M. and was continued January 8, 1979 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a music copyist during 1967 and 1969 constituted the carrying on of an unincorporated business, or whether he was engaged in the practice of a profession in accordance with section 703(c) of the Tax Law.

II. Whether petitioner filed a New York State Personal Income Tax Return for 1969.

III. Whether a hearing may be held for 1969 when petitioner was not afforded a pre-hearing conference after the issuance of the Notice of Deficiency.

IV. Whether the Income Tax Bureau may assert a greater deficiency for the years at issue during the hearing.

FINDINGS OF FACT

1. Petitioner, William P. Rowen, timely filed a New York State Personal Income Nonresident Tax Return for 1967. The Income Tax Bureau had no record which showed that petitioner filed a 1969 Personal Income Tax Return. William P. Rowen did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1967, on which it contended that petitioner was engaged in the carrying on of an unincorporated business and that the income so derived was subject to unincorporated business tax. On November 30, 1970, the Bureau issued a Notice of Deficiency for \$205.81 in unincorporated business tax, plus \$51.45 in penalty pursuant to section 685(a) of the Tax Law, and \$30.41 in interest, for a sum of \$287.67. An overpayment of \$64.10 which was shown on the tax return reduced the sum to a total tax due of \$223.57.

3. The Income Tax Bureau issued two statements of audit changes against petitioner for 1969, on which it estimated petitioner's income for personal income and unincorporated business tax purposes. The Bureau estimated the income because it contended petitioner failed to file tax returns for said year. One statement of audit changes was for \$495.00 in personal income tax, plus \$235.13 in penalty for failure to file a tax return and pay the tax due, plus \$121.68 in interest, for a total due of \$851.81. The second statement of audit changes was for \$297.00 in unincorporated business tax, plus \$141.08 in penalty for failure to file a tax return and pay the tax due, plus \$73.01 in interest, for a total due of \$511.09. On May 20, 1974, the Bureau issued one Notice of Deficiency for \$792.00 in taxes, \$376.21 in penalty, \$194.69 in interest, for a total due of \$1,362.90.

4. During the years at issue, petitioner performed services as a music copyist. His work consisted of breaking down original musical arrangements, which were composed or arranged by someone else, into written scores for individual instruments. This service was generally performed for advertising purposes when a musical background was required. Petitioner's principals were generally advertising agencies and record companies. Petitioner did not change the original score, nor did he create new music.

5. Petitioner earned a degree in music in 1961, having majored in theory and composition. He subsequently attended Yale Graduate School of Music and in 1962, began working as a sub-contracting music copyist. He was a member of Local 802, American Federation of Musicians. He belonged to the American Society of Music Copyists, which was a professional society, and served on its executive board.

6. William P. Rowen received his assignments from numerous principals. There was no division of his time among his principals. The principals were interested only in the results achieved, and not in the way he achieved them. Petitioner maintained office space in New York City and retained subcontract copyists to assist him when needed. Many of his principals reported his income on a Wage and Tax Statement (24 in 1967) and withheld income taxes and social security tax. Other principals reported his income on Federal Form 1099. The service which petitioner rendered was identical for all principals.

7. Petitioner contended that he timely filed a New York State Personal Income Tax Return for 1969. He submitted a copy of said return which showed an overpayment which was credited to his estimated tax account for 1970. Petitioner also submitted a copy of his 1970 personal income tax return which showed the same amount as the estimated tax which he credited on the 1969 return. The Income Tax Bureau stated that a search of the Bureau files indicated that a 1969 Personal Income Tax Return had not been received from petitioner. However, the Bureau stipulated that the 1969 copy could serve to correct the estimated deficiencies issued for that year.

8. Petitioner contended that with regard to the 1969 Notice of Deficiency he requested but was not afforded or allowed a pre-hearing conference, in accordance with section 601.4(c) (1) of the Rules of Practice and Procedure. Therefore, he contended that 1969 was not at issue and a small claims hearing could not be held.

9. During the hearing, the Income Tax Bureau asserted a greater deficiency for the years at issue. It contended that the evidence brought out during the hearing indicated that the income which was reported on Wage and Tax Statements was also subject to unincorporated business tax. However, the greater deficiency is only attributable to the 1969 unincorporated business tax. Petitioner had submitted a copy of his 1967 Federal Income Tax Return on which it was indicated that his wages were included in his business income.

CONCLUSIONS OF LAW

A. That the activities of petitioner, William P. Rowen, as a music copyist during 1967 and 1969 constituted the carrying on of an unincorporated business, in accordance with section 703(a) of the Tax Law. Although said activities required special knowledge and skill, they did not constitute the practice of a profession, in accordance with section 703(c) of the Tax Law.

B. That petitioner, William P. Rowen, sustained his burden of proof, in accordance with section 689(e) of the Tax Law; and that, he timely filed a personal income tax return for 1969. His copy of said return is accepted and serves to correct the estimated assessment, thereby cancelling the portion of the Notice of Deficiency which relates to personal income tax for 1969. Accordingly, the Income Tax Bureau is hereby directed to modify said Notice of Deficiency.

C. That a pre-hearing conference is not a requirement before a hearing may be held, in accordance with section 689(a) of the Tax Law and section 601.4(b) of the Rules of Practice and Procedure. The Rules state that a pre-hearing conference will be scheduled when a review indicates that it would be beneficial to do so.

D. That a greater deficiency may be asserted at a hearing, in accordance with section 689(d) (1) of the Tax Law.

E. That the income which was reported on wage and tax statements, constituted part of a business regularly carried on by petitioner, and did not constitute services performed as an employee exempt from unincorporated business tax, in accordance with section 703(b) of the Tax Law.

F. That the Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued May 20, 1974 regarding 1969 unincorporated business tax by increasing the tax from \$297.00 to \$342.56, plus increasing penalties and interest accordingly. The portion of the Notice of Deficiency regarding personal income for 1969 is cancelled, as indicated in Conclusion of Law "B." Except as so granted and modified, the petitions of William P. Rowen are in all other respects denied.

DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER