

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEX and PHYLLIS BARVINCHAK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1969, 1970 and 1971.

State of New York  
County of Albany

Marsina Donnini, 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 July, 1977, she served the within Notice of Decision by (certified) mail upon Alex and Phyllis Barvinchak (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Alex Barvinchak  
1561 Front Street  
Binghamton, 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 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

7th day of July, 1977

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEX and PHYLLIS BARVINCHAK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~xxx~~ 1969, 1970 and 1971.

State of New York  
County of Albany

Marsina Donnini, 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 July, 1977, she served the within  
Notice of Decision by (certified) mail upon Patricia Arvin  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Patricia Arvin, Accountant  
Callicoon, New York 12723

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

7th day of July, 1977

Marsina Donnini

Janet



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

July 7, 1977

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

Mr. & Mrs. Alex Barvinchak  
1561 Front Street  
Binghamton, New York

Dear Mr. & Mrs. Barvinchak:

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

Please take further notice that pursuant to  
Section(s) **690 and 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,

**Paul B. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ALEX and PHYLLIS BARVINCHAK	:	DECISION
for a 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 Years 1969, 1970 and 1971.	:	

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Petitioners, Alex and Phyllis Barvinchak, 1561 Front Street, Binghamton, New York, petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1969, 1970 and 1971.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 44 Hawley Street, Binghamton, New York, on April 24, 1975, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by Patricia Arvin, Accountant, and the Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Alexander Weiss, Esq. and Robert H. Lewis, Senior Income Tax Examiner.

ISSUES

I. The first issue in this case is whether the petitioner was required to be on the accrual basis of accounting by the Internal Revenue Code.

II. The second issue is whether the petitioner was taxable to the full extent of the increase in the balance of financial reserve accounts for each of the three taxable years in question.

FINDINGS OF FACT

1. Petitioners, Alex and Phyllis Barvinchak, timely filed New York State income tax and unincorporated business tax returns for the years 1969, 1970 and 1971.

2. Notices of determination of deficiency for income and unincorporated business taxes for the years 1969, 1970 and 1971, along with revised statements of audit changes were issued on November 26, 1973, against the taxpayers under File No. 84707786-71.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. During the taxable years in question, the taxpayer, Alex Barvinchak, was engaged in the business of selling and servicing mobile trailers. A New York State audit was made which indicated that additional

income and unincorporated business taxes were due. This additional income was attributed almost entirely to an increase in the balance of financial reserve accounts which represented certain amounts withheld by financial institutions with whom petitioner had business dealings.

5. Petitioner, Alex Barvinchak, has been in the mobile home business since 1947. While engaged as he was in a business which involved inventories of merchandise, petitioner initially elected to use the cash basis of accounting for Federal Internal Revenue purposes.

6. Petitioner, Alex Barvinchak, has maintained reserve account agreements with various financial institutions since the 1950's. In a prior New York State audit, covering the years 1963, 1964 and 1965, it was determined that no tax was owed on such reserve accounts. It is also the opinion of Federal Internal Revenue Service officials concerning the present matter that no audit should be conducted on such reserve accounts.

7. Sales paper purchase agreements, all of a similar nature, were negotiated between petitioner and several financial institutions, creating the reserve accounts under examination for the years in question. Incorporated in these agreements were provisions which

severely restricted the petitioner's access to funds held in such reserve accounts. Examples of such provisions are the creation of reserve holdback accounts, the bank's right to apply the total amount in any reserve account or reserve holdback account on any indebtedness, of whatever nature, owing to the bank, and the petitioner's inability to receive any funds contained in an unpaid balance dealer reserve until maturity of the individual contract. In further substantiation of such inaccessability, financial records submitted along with the taxpayer's petition indicate the accumulation by 1972 of a sum of over \$85,000.00 in reserve funds not received, as compared with \$159.00 actually received.

#### CONCLUSIONS OF LAW

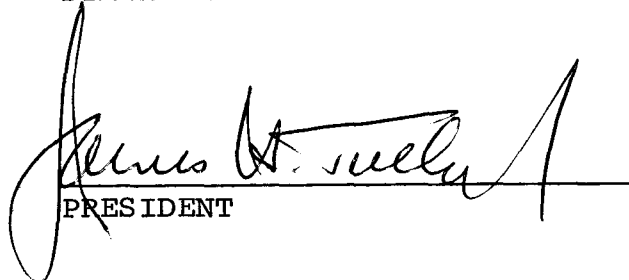
A. Under section 446 of the Internal Revenue Code of 1954, Reg. section 1.446-1(2), it is recognized that no uniform method of accounting can be prescribed for all taxpayers. Each taxpayer shall adopt such forms and systems as are, in his judgment, best suited to his needs, provided all items of gross income and expense are treated consistently from year to year. New York State follows this Federal regulation in this regard. Therefore, since the petitioner initially elected to use the cash basis of accounting, and has followed such accounting method over the years, he is not required to be on the accrual basis of accounting.

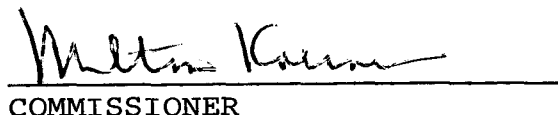
B. Petitioner is not taxable for the increase in the balance of financial reserve accounts for each of the three taxable years in question, since under the cash basis of accounting gross income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions. I.R.C. of 1954 section 446, Reg. section 1.446-1(4)(c)(1)(i), and section 451, Reg. section 1.451-2.

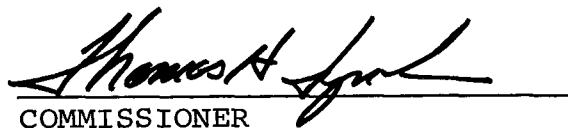
C. The taxpayers' petition is sustained. It is determined that there are no deficiencies against petitioners in either income tax or unincorporated business tax for the years 1969, 1970 and 1971.

DATED: Albany, New York  
July 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER