

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DONN A BRUCE AND TAMARA BRUCE

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 ~~(xxxxxx Period)~~
1969

State of New York
County of Albany

John Huhn, 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 13 day of October, 1978, she served the within
Notice of Decision by (certified) mail upon Donn A Bruce and
Tamara Bruce ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Donn A. and Tamara Bruce
185 East 85th Street
Apt. 35-D
New York, NY 10028
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)~~
~~xxxxxx~~ 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

13 day of October, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DONN A. BRUCE AND TAMARA BRUCE

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 years (s)~~
1969


State of New York
County of Albany

John Huhn, 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 13 day of October, 1978, she served the within
Notice of Decision by (certified) mail upon William G.
Geckham, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William G. Beckham, CPA
Suite 1809
501 5th Avenue
New York, NY 10017
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

13 day of October, 1978.







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

October 13, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Donn A. and Tamara Bruce
185 East 85th Street
Apt. 35-D
New York, NY 10028


Dear Mr. & Mrs. Bruce:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrczak
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions
of
DONN A. BRUCE and TAMARA BRUCE
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 Year 1969.

DECISION

Petitioners, Donn A. and Tamara Bruce, 185 East 85th Street (Apt. 35-D), New York, New York 10028, 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 year 1969 (File No. 11824).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1976 and continued on September 16, 1977. The petitioners appeared by William G. Beckham, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether Federal audit results for 1969 may be used as a basis for asserting New York personal income tax against petitioners for said year, when there is a matter pending with the Internal

Revenue Service for 1968 and 1970 which may result in a change in their income and expenses includable for 1969.

II. Whether the income received by petitioner Donn A. Bruce from his sales activities during the year 1969 is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Donn A. and Tamara K. Bruce, timely filed a New York State resident income tax return for the year 1969. Petitioner Donn A. Bruce did not file a New York State unincorporated business tax return for said year.

2. On March 31, 1975, the Income Tax Bureau issued two notices of deficiency, one against Donn A. and Tamara Bruce for additional personal income tax and the other against Donn A. Bruce, which held that his activities constituted the carrying on of an unincorporated business; thus, the income derived therefrom was subject to unincorporated business tax. Both notices of deficiency were based on the results of an audit by the Internal Revenue Service.

3. Donn A. Bruce stated that the joint Federal income tax returns he filed with his wife for 1968 and 1970 were under examination by the Internal Revenue Service and that certain issues had not been resolved. Petitioners are presently opposing the proposed Federal deficiencies in the Appellate Division of the

Internal Revenue Service. The final Federal determination may result in a reallocation of income or expense to the year 1969, causing a change in that year's liability even though petitioners signed a closing agreement for 1969. Based on the foregoing, Donn A. Bruce maintained that the Notice of Deficiency issued against him and his wife should be held in abeyance, pending the final Federal determination for 1968 and 1970.

4. Petitioners, Donn A. and Tamara Bruce, had also filed a claim for refund for the year 1969 with the Internal Revenue Service. Said claim was subsequently denied and petitioners executed a closing agreement for said year.

5. During 1969 Donn A. Bruce was employed by Clinton Oil Company as an assistant to the president and was in charge of its New York City office. He did not represent any other firm during said period and was under the supervision and control of the president of Clinton Oil Company for 1969.

6. Petitioner Donn A. Bruce's income was in the form of commissions based upon the sales of the company's securities. However, said petitioner's duties also included the handling of the company's business in New York City and the coordination of the company's public relations in New York, Washington, D.C., and other areas.

7. In addition to the aforementioned duties, said petitioner also made arrangements for group and annual meetings, answered queries from stockholders and investment bankers seeking debt and equity financing for the company, picked up and delivered substantial amounts of money and securities, answered mail, negotiated with dissidents, assisted in training salesmen, and helped to collect accounts receivable.

8. During 1969 Clinton Oil Company did not withhold Federal and New York State income and social security taxes from the commissions paid to petitioner Donn A. Bruce. He was reimbursed for business expenses by the firm. He was not covered under any employee-related plans and he reported his income and expenses on a Federal Schedule "C" for said year.

CONCLUSIONS OF LAW

A. That the adjustments made to petitioners' Federal taxable income by the Internal Revenue Service for 1969 are includable in petitioners' New York taxable income for said year, in accordance with section 611 of the Tax Law. It is noted that the execution of the closing agreement by petitioners constituted a final Federal determination for 1969 under 20 NYCRR 153.5 and that said determination was required to be reported to the State Tax Commission pursuant to section 659 of the Tax Law and 20 NYCRR 153.5.

B. That sufficient direction and control was exercised over petitioner Donn A. Bruce's activities by the Clinton Oil Company so as to result in an employer-employee relationship. Therefore, the income received by petitioner Donn A. Bruce during the year 1969 from said firm constituted compensation as an employee exempt from the imposition of unincorporated business tax, within the meaning and intent of section 703(c) of the Tax Law.

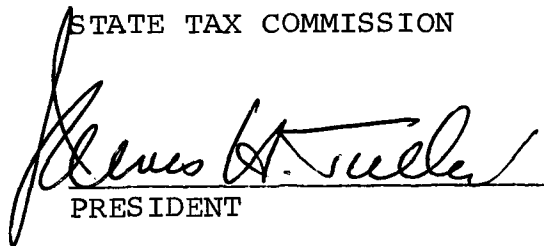
C. That the aforesaid activities of petitioner Donn A. Bruce during 1969 did not constitute the carrying on of an unincorporated business; thus, his income derived therefrom is not subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That the petition of Donn A. and Tamara Bruce for redetermination of a deficiency in personal income tax is denied and the Notice of Deficiency issued March 31, 1975 in the sum of \$2,262.01 is sustained, together with such additional interest as may be lawfully owing.

E. That the petition of Donn A. Bruce for redetermination of a deficiency in unincorporated business tax is granted and the Notice of Deficiency issued March 31, 1975 in the sum of \$1,249.72 is cancelled.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER