

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul T. & Ruth B. Abraham :
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 Year 1975. :

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 Paul T. & Ruth B. Abraham, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul T. & Ruth B. Abraham
221 Ibis St.
Ft. Myers, FL 33031
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

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Paul T. & Ruth B. Abraham :

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 Year 1975. :

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 Mark W. Brown 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. Mark W. Brown
Ryan & Brown
9 S. Main St.
Mechanicville, NY 12118

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

[Signature]

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

April 11, 1980

Paul T. & Ruth B. Abraham
221 Ibis St.
Ft. Myers, FL 33031

Dear Mr. and Mrs. Abraham:

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
Mark W. Brown
Ryan & Brown
9 S. Main St.
Mechanicville, NY 12118
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
PAUL T. ABRAHAM and RUTH B. ABRAHAM	:	DECISION
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 1975.	:	

Petitioners, Paul T. Abraham and Ruth B. Abraham, 221 Ibis Street, Fort Myers, Florida 33031, filed petitions 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 1975 (File No. 20222).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 22, 1978 at 1:15 P.M. Petitioners appeared by Mark W. Brown, Esq. The Audit Division appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUES

I. Whether petitioners were required to file a New York State nonresident income tax return for the year 1975 for the purpose of reporting interest of \$17,329.90 from a purchase money mortgage which was partial consideration for the sale of a New York unincorporated business in 1974.

II. Whether petitioner Paul T. Abraham was required to file a New York State unincorporated business tax return for the year 1975 for the purpose of reporting interest of \$17,329.90 received from a purchase money mortgage which was partial consideration for the sale of his New York unincorporated business.

III. Whether the petitioner Paul T. Abraham was required to file a New York State unincorporated business tax return for the year 1975 for the purpose of reporting a gain of \$1,533.30 he received in that year from the sale of his unincorporated business in 1974.

FINDINGS OF FACT

1. Petitioners, Paul T. Abraham and Ruth B. Abraham, did not file a New York State nonresident income tax return for 1975, nor did petitioner Paul T. Abraham file a New York State unincorporated business tax return for 1975.

2. On June 27, 1977, the Audit Division issued a Notice of Deficiency against petitioners, Paul T. and Ruth B. Abraham, and a Notice of Deficiency against petitioner Paul T. Abraham. The Notice of Deficiency against Paul T. and Ruth B. Abraham was issued on the grounds that they failed to file a non-resident income tax return for 1975 and report income earned from New York sources. Said notice asserted a deficiency in the amount of \$792.01 in personal income tax, plus \$277.20 in penalty (pursuant to sections 685(a) (1) and (2) and 685(b) of the Tax Law) and interest of \$80.78, for a total due of \$1,149.99. The Notice of Deficiency against Paul T. Abraham was issued on the grounds that he failed to file an unincorporated business tax return for 1975 and report income derived from New York sources. As a result, the notice asserted unincorporated business tax in the amount of \$762.47, plus penalty of \$266.85 (pursuant to sections 685(a) (1) and (2) and 685(b) of the Tax Law) and \$77.77 in interest, for a total due of \$1,107.09.

3. Petitioner Paul T. Abraham sold his unincorporated business which was located in New York State in 1974 and, also, moved from the State of New York during said year. In partial consideration of the sale the petitioner received a purchase money mortgage. For New York State personal income tax purposes

the entire gain realized on the sale of the business was accrued to petitioner's 1974 final resident income tax return pursuant to the "Special accruals" provision of section 654(c) of the Tax Law. For unincorporated business tax purposes, the Tax Law does not provide for "Special accruals", and therefore, no such accrual appeared on the 1974 unincorporated business tax return. Petitioner elected, for Federal income tax purposes, to report any gain realized from the sale of the business on an installment method pursuant to section 453 of the Internal Revenue Code of 1954.

4. Both petitioners were nonresidents of New York State during the entire year at issue.

5. During the year 1975, petitioner Paul T. Abraham received interest of \$17,329.90 and realized a gain of \$1,533.30 on the installment sale of his New York unincorporated business in 1974.

6. Petitioners argued that the income of \$17,329.90 received by them during 1975, from a promissory note secured by a mortgage, constituted interest income received by nonresidents from intangible personal property and that this income was not derived from property employed in a business, trade, profession or occupation carried on within the State of New York in 1975.

7. Petitioners further argued that the interest and principal received by petitioner Paul T. Abraham in 1975 on a note secured by a mortgage on New York property, which property was formerly used by the petitioner in his business, cannot be considered as an item of income received from a business being liquidated as the business was sold in 1974.

CONCLUSIONS OF LAW

A. That interest payments of \$17,329.90 received by petitioners Paul T. and Ruth B. Abraham, who were nonresidents during 1975, constituted income from the disposition or liquidation of property which was employed in an unincorporated business located in New York State and, as such, is subject to New York State

personal income tax and unincorporated business tax within the meaning and intent of sections 632(b) and 705(a) of the Tax Law respectively and 20 NYCRR 131.2 and 20 NYCRR 205.1.

B. That the gain of \$1,533.30 realized in 1975 by petitioner Paul T. Abraham on the sale of his New York unincorporated business is taxable for unincorporated business tax purposes within the meaning and intent of section 705(a) of the Tax Law and 20 NYCRR 205.1 since said gain was derived from the liquidation of a business located within New York State.

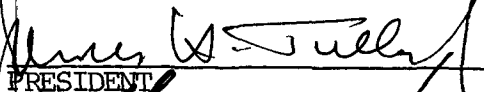
C. That the petitioners acted with reasonable cause in not filing 1975 personal and unincorporated business tax returns and that no part of the deficiencies are due to negligence or intentional disregard. Accordingly, the penalties asserted pursuant to sections 685(a)(1) and (2) and 685(b) are cancelled.

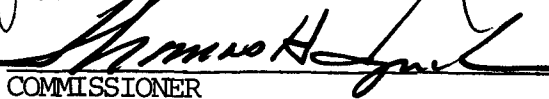
D. That the petitions of Paul T. and Ruth B. Abraham are granted to the extent indicated in Conclusion of Law "C", supra, and that, except as so granted, the petitions are in all other respects denied.

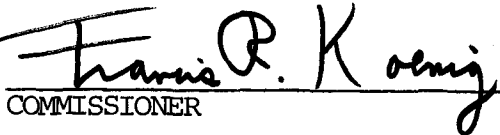
DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER