

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
John Boadle :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law :
for the Years 1973 - 1975. :

AFFIDAVIT OF MAILING

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 13th day of February, 1980, he served the within notice of Decision by certified mail upon John Boadle, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Boadle
Box 193
Pine Plains, NY 12567

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
13th day of February, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
John Boadle :
for Redetermination of a Deficiency or a Revision :
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Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law :
for the Years 1973 - 1975. :

AFFIDAVIT OF MAILING

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 13th day of February, 1980, he served the within notice of Decision by certified mail upon George DeWitt 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. George DeWitt
Pilgrim Business Mgmt., Inc.
Executive Park-One Overocker Rd.
Poughkeepsie, NY 12603

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
13th day of February, 1980.

Joanne Knapp



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

February 13, 1980

John Boadle
Box 193
Pine Plains, NY 12567

Dear Mr. Boadle:

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 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
George DeWitt
Pilgrim Business Mgmt., Inc.
Executive Park-One Overocker Rd.
Poughkeepsie, NY 12603
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOHN BOADLE
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 Years 1973, 1974 and 1975.

DECISION

Petitioner, John Boadle, Box 193, Pine Plains, New York 12567, filed a petition 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 years 1973, 1974 and 1975 (File No. 18059).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 21, 1978 at 1:15 P.M. Petitioner appeared by George DeWitt, Jr. The Income Tax Bureau appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner was entitled to the investment tax credits provided under sections 606 and 701(d) of the Tax Law, with respect to tangible personal property used in custom farming.

FINDINGS OF FACT

1. Petitioner, John Boadle, timely filed New York State personal income tax returns and unincorporated business tax returns for the years 1973 through 1975. On these returns (except for the 1975 personal income tax return),

petitioner claimed New York investment tax credits on farm machinery.

2. On March 28, 1977, the Income Tax Bureau issued a Statement of Audit Changes, disallowing petitioner's New York investment tax credits. This was done on the grounds that custom farming was considered primarily a service business; therefore, it did not meet the Income Tax Bureau's requirements. The Income Tax Bureau then issued a Notice of Deficiency against petitioner for 1973, 1974 and 1975 on March 28, 1977 for \$49.47 in personal income tax and \$232.08 in unincorporated business tax, plus interest of \$35.90, for a total of \$317.45.

3. Petitioner is in the business of custom farming. He buys farm machinery such as combines, corn-chopping rigs and plows. He then provides a variety of services for farmers such as plowing and planting their fields, chopping hay, combining grains and chopping corn. Petitioner provides not only the farm machinery but also the manpower and fuel to operate this machinery. The farm machinery is never under the control of the farmer whose land is being worked. The farmer is charged on a per acre basis; however, the picking and shelling operation may be an exception in that a farmer may be charged by the hour.

4. Petitioner is claiming New York investment credit on farm equipment that is depreciable under section 167 of the Internal Revenue Code, having a useful life of four years or more and acquired by purchase as defined by section 179(d) of the Internal Revenue Code. All of the machinery has a situs in New York State.

CONCLUSIONS OF LAW

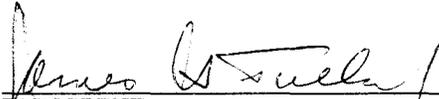
A. That the farm machinery employed by petitioner, John Boadle, in his custom farming business qualified for the investment tax credit allowable under sections 606(a)(2) and 701(d)(2) of the Tax Law.

B. That the petition of John Boadle is granted and the Notice of Deficiency issued on March 28, 1977 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 13 1980


PRESIDENT


COMMISSIONER

COMMISSIONER