

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul A. Tuohey (Deceased) :
and Myrtle Tuohey : 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 1971. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Paul A. Tuohey (Deceased), and Myrtle Tuohey, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

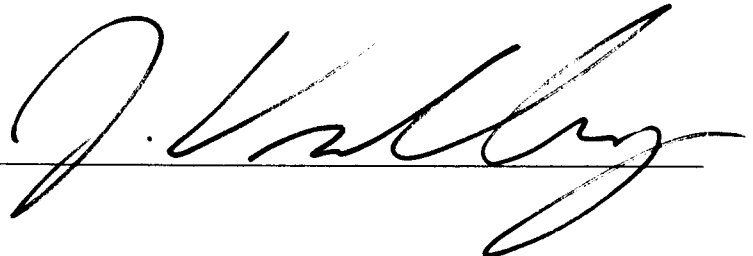
Paul A. Tuohey (Deceased)
and Myrtle Tuohey
25 Broadway
Ft. Edward, NY 12828

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
16th day of May, 1980.

Joanne Knapp



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

May 16, 1980

Paul A. Tuohey (Deceased)
and Myrtle Tuohey
25 Broadway
Ft. Edward, NY 12828

Dear Mrs. Tuohey:

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 TAX COMMISSION

In the Matter of the Petition :
of :
PAUL A. TUOHEY (Deceased) and :
MYRTLE TUOHEY : 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 1971.

On December 5, 1978, petitioner Myrtle Tuohey advised the State Tax Commission, in writing, that she desired to waive a small claims hearing and to submit the case to the State Tax Commission on the entire record contained in the file.

II. Whether interest pursuant to section 684 of the Tax Law was properly asserted against petitioners.

FINDINGS OF FACT

1. Petitioners, Paul A. Tuohey and Myrtle Tuohey, timely filed a New York State personal income tax return for 1971, on which petitioner Paul A. Tuohey indicated his occupation as "self-employed". An unincorporated business tax return was not filed for said year.

2. On April 12, 1974, the Income Tax Bureau issued a Statement of Additional Tax Due against petitioners, imposing additional personal income tax of \$981.87 and unincorporated business tax of \$242.65, plus interest of \$146.45, for a total due of \$1,370.97. The statement was based on Federal audit changes for said year.

3. On May 2, 1974, petitioners made a payment of \$981.87 for additional personal income tax due but did not make payment on the interest that was legally owed on it.

4. On May 19, 1975, the Income Tax Bureau issued a Statement of Audit Changes revising the Statement of Additional Tax Due dated April 12, 1974, reaffirming the Bureau's contention that petitioner Paul A. Tuohey's income from his activity as a wholesale police equipment salesman was subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued May 19, 1975 for 1971 for \$242.65 in unincorporated business tax, plus interest of \$157.36, of which \$119.84 was for the interest owed on the personal income tax previously paid.

5. Petitioner Paul A. Tuohey sold police equipment such as tear gas, guns, buttons and badges. No evidence was submitted by petitioners on how they arrived at gross receipts for the business, nor how many principals there were or their control over his activities. Petitioner Paul A. Tuohey reported no income taxes withheld but did pay self-employment tax.

6. Petitioner Paul A. Tuohey filed Federal Schedule "C" to claim expenses. He used a part of his home as an office plus one-fifth of a rental house for a second office. Petitioner also claimed advertising expense as part of the expense of doing business.

7. During the year in issue, petitioner Myrtle Tuohey was not engaged in any business activity.

CONCLUSIONS OF LAW

A. That petitioner Myrtle Tuohey is not liable for any unincorporated business tax during the year at issue.

B. That the selling activities of petitioner Paul A. Tuohey during 1971 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law, and that the income derived therefrom was subject to unincorporated business tax imposed under section 701 of the Tax Law.

C. That the interest pursuant to section 684 of the Tax Law for the personal income tax due in the amount of \$119.84 was properly asserted and is therefore sustained.

D. That the petition is granted to the extent set forth in Conclusion of Law "A"; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER