

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
David Choczner :
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 :
Years 1972, 1973, 1974 & 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 6th day of November, 1981, he served the within notice of Decision by certified mail upon David Choczner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Choczner
213 Bennett Ave.
New York, NY 10040

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
6th day of November, 1981.

Ann E. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

David Choczner :

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:
Years 1972, 1973, 1974 & 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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Harold B. Bonime the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold B. Bonime
170 Broadway
New York, NY 10038

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
6th day of November, 1981.

Carrie G. Haplund

J. Vredenburg

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

November 6, 1981

David Choczner
213 Bennett Ave.
New York, NY 10040

Dear Mr. Choczner:

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
Harold B. Bonime
170 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID CHOCZNER	:	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 or the Years 1972, 1973, 1974 and 1975.	:	

Petitioner, David Choczner, 213 Bennett Avenue, New York, New York 10040, 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 1972, 1973, 1974 and 1975 (File No. 21822).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 5, 1981 at 1:15 P.M. Petitioner appeared by Harold B. Bonime, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUES

I. Whether certain amounts reported as interest income on petitioner's personal income tax returns are properly includible in petitioner's unincorporated business gross income.

II. Whether the Audit Division erred in its computation of petitioner's additional personal income tax liability for 1973.

FINDINGS OF FACT

1. Petitioner, David Choczner, timely filed New York State combined income tax returns with his wife, Chawa Choczner for the years 1972, 1973, 1974 and 1975. In conjunction with said returns, petitioner filed an unincorporated

business tax return for each of the years at issue, wherein he reported the income derived from his sole proprietorship, The American Global Trading Co.

2. On January 30, 1978 the Audit Division issued a Statement of Audit Changes to petitioner wherein, as the result of a field audit, income reported for personal income tax purposes for the years at issue as interest received from notes, and discounts on purchases reported as interest income, was held subject to the unincorporated business tax on the basis that such income was derived from petitioner's business. Additionally, a second Statement of Audit Changes was issued on said date wherein adjustments were made crediting petitioner with that portion of the interest income held to be derived from petitioner's sole proprietorship, which was reported by his wife on their combined personal income tax returns for said years. Accordingly, a Notice of Deficiency was issued against petitioner under the same date, asserting additional unincorporated business tax of \$1,372.77, additional personal income tax of \$1,530.51, plus interest of \$691.14, for a total due of, \$3,594.42. Said total is to be reduced by the computed personal income tax overpayments of petitioner's wife per the aforestated Statement of Audit Changes. Petitioner had properly executed and submitted consent forms extending the period of limitation upon assessment of personal income and unincorporated business taxes for the years 1972 and 1973 to April 15, 1978.

3. During the hearing held herein the Audit Division conceded a computational error with respect to petitioner's 1973 personal income tax. Said error resulted on the personal income tax Statement of Audit Changes wherein petitioner was given credit for "Tax As Previously Stated" of \$351.14, rather than the correct amount of \$466.03, thereby resulting in an overstatement of petitioner's liability for said year of \$114.89.

4. During the hearing petitioner conceded "discounts on purchases reported as interest income" for the years 1972, 1973, 1974 and 1975, of \$341.05, \$664.37, \$2,413.00 and \$1,475.00 respectively, as properly being subject to the imposition of unincorporated business tax.

5. Petitioner contended that the interest income received from notes represented personal income and thus should not be includable in the unincorporated business gross income of his business, American Global Trading Co. He claimed use of only one checking account for personal and business purposes under the name of David Choczner, d/b/a American Global Trading Co.

6. The interest income from notes is primarily the result of petitioner discounting notes of American Global Trading Fastners, a company with which petitioner had business dealings. The transactions were recorded on the business records and the business balance sheets listed as assets, notes receivable American Global Fasteners and notes receivable discounted.

CONCLUSIONS OF LAW

A. That petitioner, David Choczner, has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that the interest income received from notes was personal in nature. Accordingly, such income is deemed to be derived from petitioner's unincorporated business, and as such, is includable in the unincorporated business gross income of said business pursuant to section 705(a) of the Tax Law.

B. That the "discounts on purchases reported as interest income" is subject to the unincorporated business tax as conceded by petitioner.

C. That petitioner's personal income tax liability for 1973 is to be reduced by \$114.89. Said amount representing a computational error as conceded by the Audit Division.

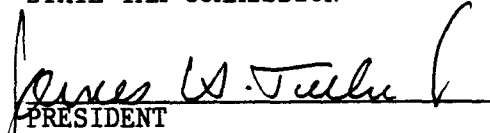
D. That the petition of David Choczner is granted to the extent provided in Conclusion of Law "C" supra, and except as so stated, said petition is, in all other respects, denied.

E. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 30, 1978 to be consistent with the decision rendered herein.

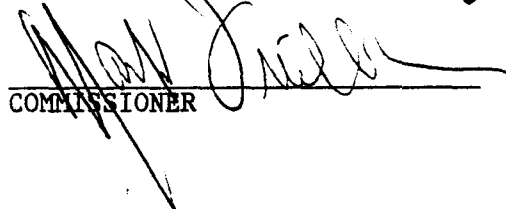
DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER