

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Alexander W. Dalgeish :  
and Joan Dalgleish : 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 1973. :

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 March, 1981, he served the within notice of Decision by certified mail upon Alexander W. Dalgeish, and Joan Dalgleish, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alexander W. Dalgeish  
and Joan Dalgleish  
P.O. Box 16  
Glenwood, NY 14069

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 March, 1981.

*Cornie P. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Alexander W. Dalgeish :  
and Joan Dalglish : 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 1973. :

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 March, 1981, he served the within notice of Decision by certified mail upon Charles W. Mayo 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. Charles W. Mayo  
Latham, Lumsden & McCormick  
120 Delaware Ave.  
Buffalo, NY 14202

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 March, 1981.

Constance A. Haglund

Jay Vredenburg

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

March 13, 1981

Alexander W. Dalgeish  
and Joan Dalgleish  
P.O. Box 16  
Glenwood, NY 14069

Dear Mr. & Mrs. Dalgeish:

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  
Charles W. Mayo  
Latham, Lumsden & McCormick  
120 Delaware Ave.  
Buffalo, NY 14202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ALEXANDER W. DALGLEISH and JOAN DALGLEISH : 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 1973. :  
:

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Petitioners, Alexander W. Dalglish and Joan Dalglish, P.O. Box 16, Glenwood, New York 14069, 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 year 1973 (File No. 16128).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on September 30, 1980 at 10:45 A.M. Petitioner Alexander W. Dalglish appeared with Charles W. Mayo, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether earnings from services performed by petitioner Alexander W. Dalglish for A.W. Dalglish Company, Inc. and Penn-York Machine Tool Sales, Inc. are subject to unincorporated business tax.

II. Whether "reasonable cause" exists for the cancelling of penalties imposed for failure to file an unincorporated business tax return.

FINDINGS OF FACT

1. Petitioners, Alexander W. Dalglish and Joan Dalglish, filed a New York State Income Tax Resident Return for 1973. Petitioner Alexander W. Dalglish did not file an unincorporated tax return for said year.

2. On June 30, 1975, the Audit Division issued a Statement of Audit Changes against petitioners for 1973, on the grounds that; a) The petitioners' rental loss was not fully substantiated. b) The payments toward petitioners' 1973 New York income tax did not meet the 80 percent requirement, and they did not file an estimated tax, therefore, penalty was imposed in accordance with section 685(c) of the Tax Law. c) That since petitioner Alexander W. Dalgleish was a manufacturers representative, serving more than one principal, his earnings were determined to be subject to unincorporated business tax. d) Since petitioner Alexander W. Dalgleish did not file an unincorporated business tax return, penalties are imposed under sections 685(a)(1) and (2) of the Tax Law. Accordingly, on May 24, 1976 the Audit Division issued a Notice of Deficiency against the petitioners for the year 1973 imposing personal income tax of \$22.14 and unincorporated business tax of \$1,047.94, plus penalties, pursuant to section 685(c) and 685(a)(1) and (2) of the Tax Law in amounts of \$21.97, \$235.79 and \$136.23, respectively, and interest of \$169.08.

3. At the hearing, petitioners conceded that the personal income tax and the penalty imposed pursuant to section 685(c) of the Tax Law were correct and, therefore, are not at issue.

4. Petitioner Alexander W. Dalgleish was the sole officer/stockholder and employee of A.W. Dalgleish Company, Inc. (A.W.D. Corporation) for whom he performs administrative as well as sellings services and for which he is compensated in the form of a salary. Federal and New York State income taxes are withheld from compensation paid to him by the A.W.D. Corporation. In addition, the A.W.D. Corporation paid social security taxes, unemployment insurance, disability insurance and compensation insurance in conformity with

employer-employee requirements. Petitioner Alexander W. Dalglish's travel and selling expenses are submitted to and reimbursed by A.W.D. Corporation and no such expenses are deducted by him on his personal income tax return other than the expense of maintaining an office in his home. A.W. Dalglish Company, Inc. is a manufacturers representative engaged in the sale of metal forming and plastic molding machinery and auxiliary equipment.

5. Petitioner Alexander W. Dalglish is also a fifty percent stockholder, officer and sales representative in Penn-York Machine Tool Sales, Inc. located in Pittsford, New York. This company was a manufacturers representative engaged in sales of equipment not available to the A.W.D. Corporation. Since all petitioner's travel and selling expenses are reimbursed by A.W.D. Corporation, Penn-York Machine Tool Sales, Inc. pays A.W.D. Corporation its share of expenses. Petitioner Alexander W. Dalglish was compensated by Penn-York Machine Tool Sales, Inc. based on net income of the company. No taxes were deducted from his compensation.

6. Both A.W.D. Corporation and Penn-York Machine Tool Sales, Inc. acted as manufacturers representatives. All commissions earned by A.W.D. Corporation or Penn York Machine Tool Sales Inc. were paid to them. All contracts with manufacturers were in the name of the respective corporations and not in the name of the petitioner Alexander W. Dalglish. Both A.W.D. Corporation and Penn-York Machine Tool Sales, Inc. had knowledge that the petitioner was dividing his time and effort between them.

7. Petitioner's accountant stated that during the year at issue his firm advised the petitioner that his income was not subject to unincorporated business tax.

CONCLUSIONS OF LAW

A. That section 703 of the Tax Law provides, in part:

"An unincorporated business means any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership or fiduciary or a corporation in liquidation, but not including any entity subject to tax under Articles nine, nine-a, nine-b, nine-c, thirty-two or thirty three of the Tax Law."

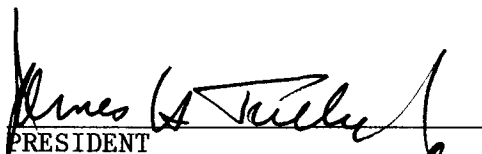
B. That the petitioner Alexander W. Dalglish is an employee of both corporations and is not operating businesses beyond the scope of the corporation tax laws, therefore, the income received by him from the corporations is not taxable for unincorporated business tax purposes in accordance with section 703 of the Tax Law. Therefore, all penalties imposed pursuant to section 685(a)(1) and (2) are cancelled since the petitioner's activities are not subject to unincorporated business tax.

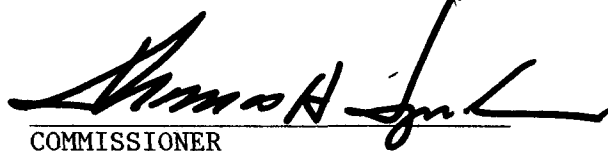
C. That the petition of Alexander W. Dalglish and Joan Dalglish is granted only to the extent that unincorporated business tax and penalties pursuant to section 685(a)(1) and (2) are cancelled. The Audit Division is directed to modify the Notice of Deficiency issued May 24, 1976 to be consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAR 13 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER