

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jean & Edeline Delus :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
and UBT under Article 22 & 23 of the Tax Law for :
the Years 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 4th day of December, 1981, he served the within notice of Decision by certified mail upon Jean & Edeline Delus, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jean & Edeline Delus
100-29 195th St.
Hollis, NY 11423

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
4th day of December, 1981.

Annie D. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
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AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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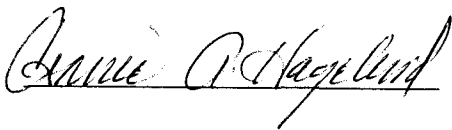
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of December, 1981, he served the within notice of Decision by certified mail upon Harvey O. Lazarowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

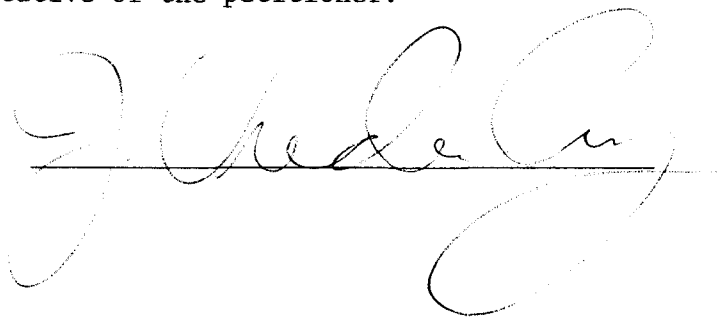
Harvey O. Lazarowitz
Lazarowitz & Manganillo
2004 Ralph Ave.
Brooklyn, NY 11234

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
4th day of December, 1981.





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

December 4, 1981

Jean & Edeline Delus
100-29 195th St.
Hollis, NY 11423

Dear Mr. & Mrs. Delus:

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
Harvey O. Lazarowitz
Lazarowitz & Manganillo
2004 Ralph Ave.
Brooklyn, NY 11234
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEAN DELUS and EDELINE DELUS	:	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 Years 1973, 1974 and 1975.	:	

Petitioners, Jean Delus and Edeline Delus, 100-29 195th Street, Hollis, New York 11423, 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. 22790).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 1, 1981 at 2:45 P.M. Petitioner Jean Delus appeared with A. B. Lazarowitz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner Jean Delus was conducting an unincorporated business in New York State during the years 1973, 1974 and 1975.

FINDINGS OF FACT

1. Petitioners, Jean Delus and Edeline Delus, timely filed joint New York State income tax resident returns for the years 1973, 1974 and 1975, on which net business income was reported. Petitioner Jean Delus did not file unincorporated business tax returns for the years 1973, 1974 and 1975.

2. On June 2, 1978 the Tax Compliance Bureau issued a Notice of Deficiency for \$2,145.64 plus penalties and interest, along with a Statement of Audit

Changes on which;

- (a) an unreported federal audit adjustment was imposed for the year 1973, resulting in an additional personal income tax of \$431.43. This item was conceded by petitioners and is not at issue. The additional tax due of \$431.43 was paid without interest.
- (b) net business income reported during the years 1973, 1974 and 1975 was held subject to the unincorporated business tax.
- (c) penalties under sections 685(a)(1) and 685(a)(2) of the Tax Law were imposed for petitioner's failure to file and pay the unincorporated business tax.

3. Petitioner Jean Delus is the owner and operator of a truck, which he leased exclusively to Food Haulers, Inc., a firm located in Elizabeth, New Jersey.

4. Petitioner's truck was registered in New Jersey and kept there in a space rented by petitioner from Food Haulers, Inc. Food Haulers, Inc. provided petitioner with desk, telephone and locker facilities on its premises in New Jersey.

5. Petitioner's assignments, pick-ups and recordkeeping activities were conducted from the facilities provided by Food Haulers, Inc. in New Jersey.

6. No evidence is in the record to indicate that petitioner's business activities were wholly or partly conducted in New York State or that he maintained a regular place of business in New York State.

CONCLUSIONS OF LAW

A. That petitioner Jean Delus was conducting his activities as a trucker and/or trucking agent entirely from within the State of New Jersey during the years 1973, 1974 and 1975 and was not carrying on an unincorporated business in the State of New York during said years. Accordingly, any income derived

therefrom is not subject to the unincorporated business tax within the meaning and intent of section 701(a) of the Tax Law.

B. That the petition of Jean Delus and Edeline Delus is granted to the extent that the unincorporated business tax imposed for the years 1973, 1974 and 1975 is cancelled along with the penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency issued June 2, 1978 along with such interest as may be lawfully owing on the additional personal income tax imposed which was paid without interest.

D. That except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 04 1981

STATE TAX COMMISSION



PRESIDENT


COMMISSIONER


COMMISSIONER

STATE TAX COMMISSION
TAX APPEALS BUREAU
MEMORANDUM

TO: State Tax Commission

FROM: John J. Sollecito, Director 

SUBJECT: Charles and Lillian Wickman
(Small Claims) File No. 24378

I disagree with the proposed decision of the Hearing Officer that the activities of petitioner Charles F. Wickman are not subject to unincorporated business tax.

I am of the opinion that petitioner's activities as an owner-operator of a tractor are those of an independent contractor and that he did not maintain a regular place of business outside New York State; therefore, he is subject to unincorporated business tax.

In addition to the Hearing Officer's proposed decision (marked "1") I have had a second decision prepared (Decision "2") which I believe more closely follows prior decisions.

September 20, 1982