

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward B. & Mary F. Hauck : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax & UBT under Article 22, 23 & 30 of the Tax Law :  
for the Years 1976 & 1977. :

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State of New York  
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Edward B. & Mary F. Hauck, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward B. & Mary F. Hauck  
20 Garber Square  
Ridgewood, NJ 07450

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  
24th day of January, 1983.

Kathy Pfaffenbach

Connie Abagellund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Edward B. & Mary F. Hauck :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income  
Tax & UBT under Article 22, 23 & 30 of the Tax Law:  
for the Years 1976 & 1977.

State of New York  
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Mortimer D. Haut the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mortimer D. Haut  
M.D. Haut & Co.  
500 Fifth Ave.  
New York, NY 10036

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  
24th day of January, 1983.

Kathy Pfaffenbach

Janice D. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

January 24, 1983

Edward B. & Mary F. Hauck  
20 Garber Square  
Ridgewood, NJ 07450

Dear Mr. & Mrs. Hauck:

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 & 1312 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Mortimer D. Haut  
M.D. Haut & Co.  
500 Fifth Ave.  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
EDWARD B. HAUCK AND MARY F. HAUCK	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income and	:	
Unincorporated Business Taxes under Articles	:	
22 and 23 of the Tax Law and New York City	:	
Nonresident Earnings Tax under Chapter 46,	:	
Title U of the Administrative Code of the	:	
City of New York for the Years 1976 and 1977.	:	

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Petitioners, Edward B. Hauck and Mary F. Hauck, 20 Garber Square, Ridgewood, New Jersey 07450, filed a petition for redetermination of a deficiency or for refund of New York State personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1976 and 1977 (File Nos. 33051, 33448, 33449 and 33450).

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 March 25, 1982 at 9:15 A.M. Petitioners appeared by Mortimer D. Haut. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner Edward B. Hauck properly allocated a portion of his business income to sources without New York State.

II. Whether adjustments increasing petitioner Edward B. Hauck's income during the years at issue, based on a cash availability analysis, were proper.

III. Whether petitioner Edward B. Hauck's contributions to his pension plan are properly deductible for unincorporated business tax purposes.

FINDINGS OF FACT

1. Edward B. Hauck (hereinafter petitioner) and Mary F. Hauck timely filed a joint New York State Income Tax Nonresident Return with New York City Nonresident Earnings Tax for each of the years 1976 and 1977; wherein petitioner allocated fifty (50) percent of his business income to sources without New York State in 1976 and thirty-five (35) percent of his business income to sources without New York State in 1977. Additionally, petitioner filed a New York State Unincorporated Business Tax Return for 1976 wherein he reported fifty (50) percent of his business income as allocable to New York State. This business income was derived from his public relations activities, engaged in under the name Revere Associates. An unincorporated business tax return is not on record as having been filed by petitioner for taxable year 1977.

2. On December 24, 1980, the Audit Division issued four (4) notices of deficiency against petitioners as follows:

- (a) 1976 - Asserting New York State personal income tax of \$1,264.35, plus penalties and interest of \$551.85, for a total due of \$1,816.20.
- (b) 1976 - Asserting New York State unincorporated business tax and New York City nonresident earnings tax of \$1,278.23, plus penalties and interest of \$552.89, for a total due of \$1,831.12.
- (c) 1977 - Asserting New York State personal income tax of \$2,502.60, plus penalties and interest of \$784.99, for a total due of \$3,287.59.
- (d) 1977 - Asserting New York State unincorporated business tax and New York City nonresident earnings tax of \$2,589.81, plus penalties and interest of \$1,820.47, for a total due of \$4,410.28.

Penalties asserted for personal income tax purposes were pursuant to sections 685(b) for negligence and 685(c) for failure to file a declaration of estimated tax (1976) and underpayment of estimated tax (1977).

Penalties asserted for unincorporated business tax purposes were pursuant to sections 685(b) and 685(c) for reasons as aforestated (1976 and 1977), plus sections 685(a)(1) and 685(a)(2) (1977 only), for failure to file an unincorporated business tax return and failure to pay the tax determined to be due, respectively.

3. The notices of deficiency issued with respect to taxable year 1976 were timely issued, since on January 15, 1980, petitioners executed a Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes for said year extending the period of limitation to April 15, 1981. Said consent was validated on January 22, 1980.

4. The deficiencies herein were issued with respect to adjustments made as the result of a field audit as follows:

- (a) Petitioner's claimed business allocation was disallowed "since there was no regular place of business outside of New York State".
- (b) Petitioner's reported business income was increased by \$7,672.00 for 1976 and \$7,420.00 for 1977 based on a cash availability analysis.
- (c) Deductions claimed for petitioner's contributions to his personal pension plan were disallowed for unincorporated business tax purposes only on the basis that such contributions do not constitute allowable deductions.

5. The only issue contested, pursuant to the petition of Edward B. and Mary F. Hauck, was with respect to petitioner's allocation of business income to sources without New York. Petitioner did not concede the adjustments pursuant to the cash availability analysis; however, he indicated at the hearing that he was unprepared to argue same. Although a period of thirty (30)

days was granted subsequent to the hearing for submission of evidence with respect to this issue, no such documentation was forthcoming.

6. Petitioner contended that the deductions claimed for contributions to his personal pension plan were properly allowable for unincorporated business tax purposes; however, no evidence, documentary or otherwise, was introduced to support such contention.

7. Although it appears from the record herein that petitioner's claimed allocations were computed on the basis of time spent within and without New York, the exact method used by petitioner is unclear since the record is void of petitioner's actual allocation computations.

8. During 1976, petitioners resided in a two bedroom apartment in Ramsey, New Jersey. Subsequently, in 1977, they moved to another two bedroom apartment in Fort Lee, New Jersey. Although petitioners had three children, none lived with them during the years at issue. Petitioner used the second bedroom in each apartment as an office. The allocations at issue herein were claimed with respect to such offices maintained at petitioners' residences.

9. During the years at issue, petitioner continuously maintained a business office in New York City.

10. The apartments petitioners resided in during 1976 and 1977 were in residential buildings located in residential neighborhoods. Petitioner did not maintain a separate business telephone listing. No rental expenses were claimed for petitioner's home offices and depreciation deductions were not claimed with respect to furniture or equipment contained in such offices.

11. Petitioner had business stationary listing his New Jersey addresses.

12. No documentation was introduced which would evidence that petitioner used his home office on a regular and systematic basis.

CONCLUSIONS OF LAW

A. That an unincorporated business is carried on at any place either within or without New York State where the unincorporated business entity has a regular place of business. A regular place of business is any bona fide office, factory warehouse or other place which is systematically and regularly used by the unincorporated business entity in carrying on its business [20 NYCRR 207.2(a)].

B. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that his office maintained at home was a bona fide business office which was systematically and regularly used by the business entity. Accordingly, petitioner is deemed to have not carried on his business without New York State during the years at issue herein and the disallowances of petitioner's claimed allocations of business income to sources without New York State are hereby sustained.

C. That Chapter 46, Title U, of the Administrative Code of the City of New York provides in section U46-4.0(b)(1) that:

"If a taxpayer has no regular place of business outside the city all of his net earnings from self-employment shall be allocated to the city."

D. That petitioner has failed to sustain his burden of proof required pursuant to section U46-39.0(e) of Chapter 46, Title U to show that he had a regular place of business outside New York City. Accordingly, the disallowances of petitioner's claimed allocations of business income to sources without New York City are hereby sustained.

E. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law and section U46-39.0(e) of Chapter 46, Title U, to show that the adjustments increasing his business income as the



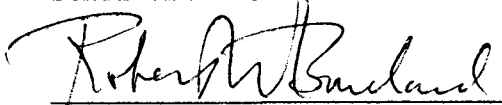
result of a cash availability analysis were improper. Accordingly, such adjustments are hereby sustained for New York State and New York City tax purposes.

F. That pursuant to Internal Revenue Service Treasury Regulation 1.404(e)-1A, the amounts of the contributions made to a retirement plan by an owner-employee or other self-employed person are, to the extent deductible, treated as adjustments to gross income in computing adjusted gross income. Accordingly, such contributions are not deductible as a business expense for the purpose of computing net profit from such business.

G. That the petition of Edward B. Hauck and Mary F. Hauck is denied and the four (4) notices of deficiency dated December 24, 1980 are hereby sustained together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York  
JAN 24 1983

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER