

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul & Sophie Preuss :
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 1977. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 27th day of April, 1983, he served the within notice of Decision by certified mail upon Paul & Sophie Preuss, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul & Sophie Preuss
Ferland Dr.
Hopewell Junction, NY 12533

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
27th day of April, 1983.

David Parchuck

Annice A. Hugelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul & Sophie Preuss :
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 1977. :
:

State of New York
County of Albany

David Parchuck, 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 27th day of April, 1983, he served the within notice of Decision by certified mail upon Paul A. Baldovin the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul A. Baldovin
2 La Grange Ave., Suite 226
Poughkeepsie, NY 12602

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
27th day of April, 1983.

David Parchuck

Bennie A. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

April 27, 1983

Paul & Sophie Preuss
Ferland Dr.
Hopewell Junction, NY 12533

Dear Mr. & Mrs. Preuss:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Paul A. Baldovin
2 La Grange Ave., Suite 226
Poughkeepsie, NY 12602
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PAUL PREUSS AND SOPHIE PREUSS	:	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 1977.	:	

Petitioners, Paul Preuss and Sophie Preuss, Ferland Drive, Hopewell Junction, New York 12533, 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 1977 (File No. 30842).

A small claims hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Building #9, Room 107, State Campus, Albany, New York, on July 20, 1982 at 1:15 P.M. Petitioners, Paul Preuss and Sophie Preuss appeared by Paul A. Baldovin, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioners were entitled to a deduction from unincorporated business gross income for the reasonable value of services rendered by Sophie Preuss for tax year 1977 and whether the amount of that deduction constituted income earned by Sophie Preuss in 1977.

FINDINGS OF FACT

1. Petitioners, Paul Preuss and Sophie Preuss, timely filed a New York State Personal Income Tax Resident Return and a New York State Unincorporated

Business Tax Return for tax year 1977. Petitioners filed separately on the same personal income tax return.

2. On April 4, 1980, the Audit Division issued a Notice of Deficiency against petitioners for the years 1976¹ and 1977. Attached to the Notice was a Statement of Audit Changes dated January 7, 1980 which imposed additional personal income tax of \$265.46 plus interest and additional unincorporated business tax of \$269.30 plus interest for 1977 "as a result of a field audit".

3. Petitioners included \$5,200.00 as part of their deduction for "(c)ost of goods sold and/or operations" on their 1977 New York State Unincorporated Business Tax Return which they argue was money earned by Sophie Preuss from the unincorporated business operated by Paul Preuss. In calculating the unincorporated business tax deficiency herein, the Audit Division disallowed this deduction.

4. Petitioners on their 1977 personal income tax return reported \$5,208.32 as income of Sophie Preuss. This included the \$5,200.00 that they claim was earned by her from the unincorporated business. The Audit Division in redetermining petitioners' personal income tax liability did not allow such allocation and, in effect, made it infeasible for petitioners to file separately on one return.

5. Petitioner Paul Preuss has operated an unincorporated plumbing and heating business since 1954. His wife, petitioner Sophie Preuss, has worked with him since the beginning of the business. She has performed various clerical and bookkeeping duties for the business including the billing of customers and preparation of the payroll.

¹ The 1976 tax year is not at issue in this proceeding since the issue(s) relating to 1976 were resolved at a pre-hearing conference.

6. Paul Preuss admitted that he did not pay his wife \$5,200.00, and petitioners have failed to introduce any documentary proof showing that money was received by Sophie Preuss as compensation for rendering clerical services to the unincorporated business.

7. Sophie Preuss was not a partner with Paul Preuss in the unincorporated business.

CONCLUSIONS OF LAW

A. That although Sophie Preuss performed valuable services for the heating and plumbing business operated by her husband, Paul Preuss, in order for petitioners to secure a deduction for employee salary a certain amount of compliance with everyday business practice is required. The failure to pay or deduct for unemployment insurance, worker's compensation, disability benefits, Federal and State withholding of income tax indicates that there was no employment. Matter of Harvey B. Rosenbloom, State Tax Commission, April 23, 1982.

B. That Tax Law §708(a) provides that:

"In computing unincorporated business taxable income, there shall be allowed...deductions for reasonable compensation not in excess of five thousand dollars for personal services of the proprietor and of each partner actively engaged in the unincorporated business, but the aggregate of such deductions shall not exceed twenty per centum of the unincorporated business taxable income..."

Since Sophie Preuss was not a partner in the heating and plumbing business, no deduction is allowable for reasonable compensation for her services under this provision.

C. That since petitioners were not entitled to deduct the \$5,200.00 allegedly earned by Sophie Preuss as an unincorporated business deduction, it was proper for the Audit Division to recalculate petitioners' personal income tax liability by increasing the income of Paul Preuss by the \$5,200.00, and prohibiting the allocation of such sum to Sophie Preuss.

D. That the petition of Paul Preuss and Sophie Preuss concerning tax year 1977 is in all respects denied.

DATED: Albany, New York

APR 27 1983

STATE TAX COMMISSION

Rodriguez
PRESIDENT

Francis R Koenig
COMMISSIONER

Walt Diehl
COMMISSIONER