

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Charles F. Wickman	:	
and Lillian Wickman	:	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 1973 & 1974.	:	

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Charles F. Wickman and Lillian Wickman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles F. Wickman
and Lillian Wickman
30 Briarroot Drive
Smithtown, NY 11787

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 February, 1983.

David Parchuck

Bernie A. Hageland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
Charles F. Wickman	:	
and Lillian Wickman	:	AFFIDAVIT OF MAILING
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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 1973 & 1974.	:	

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Frederick J. Ziems the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frederick J. Ziems
54 N. Country Rd., P.O. B
Miller Place, NY 11764

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 February, 1983.

David Parchuck

Conrad A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 4, 1983

Charles F. Wickman
and Lillian Wickman
30 Briarroot Drive
Smithtown, NY 11787

Dear Mr. & Mrs. Wickman:

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
Frederick J. Ziems
54 N. Country Rd., P.O. B
Miller Place, NY 11764
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CHARLES F. WICKMAN AND LILLIAN WICKMAN
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 and 1974.

DECISION

Petitioners, Charles F. Wickman and Lillian Wickman, 30 Briaroot Drive, Smithtown, New York 11787, 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 and 1974 (File No. 24378).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 30, 1981 at 9:00 A.M. Petitioners appeared with Frederick J. Ziems, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

Whether petitioner Charles Wickman was engaged in an unincorporated business and, if so, was he entitled to allocate income to sources outside of New York on the basis that said income was earned from a regular place of business without New York State.

FINDINGS OF FACT

1. Petitioners, Charles F. Wickman and Lillian Wickman, filed an original and amended New York State Income Tax Resident Return for 1973 and a combined New York State Income Tax Resident Return for 1974. Petitioner Charles F. Wickman filed unincorporated business tax returns for 1973 and 1974.

2. On July 10, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$24.08, unincorporated business tax of \$1,580.15 plus interest of \$473.74, for a total of \$2,077.97. The deficiency in personal income tax was based on an unreported federal audit adjustment; and the deficiency for unincorporated business tax was based on a field audit, which incorporated in part the federal audit adjustments, and held that total business income derived by petitioner Charles Wickman as the owner-operator of a tractor was subject to unincorporated business tax.

3. On January 3, 1977, the Audit Division received from petitioners a signed consent fixing the period of limitation upon assessment of personal income and unincorporated business taxes for 1973 until April 15, 1978.

4. Petitioners did not contest the assessment for personal income tax and, therefore, it is not at issue.

5. Petitioner Charles F. Wickman is the owner-operator of a tractor which is licensed and based in Indiana, and leased exclusively to Atlas Van-Lines, Inc. (hereinafter "corporation") located in Evansville, Indiana.

6. Petitioner's assignments, pick-ups and recordkeeping activities were conducted from the corporation's facilities in Indiana.

7. Petitioner contends that he filed unincorporated business tax returns for the subject years at the suggestion of his former accountant, who has since died. The accountant filed said returns although he knew or should have known that petitioner conducted his operation without New York State, and did not maintain a regular place of business in New York State for 1973 and 1974.

CONCLUSIONS OF LAW

A. That petitioner Charles F. Wickman conducted his activity as an owner-operator entirely within the State of Indiana for 1973 and 1974 and was

not carrying on an unincorporated business in the State of New York. 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 (Matter of the Petition of Jean Delus and Edeline Delus, State Tax Commission, December 4, 1981).

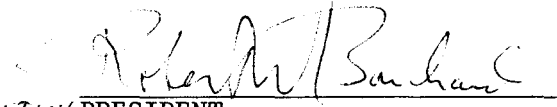
B. That the issue of whether petitioner Charles F. Wickman was engaged in an unincorporated business is rendered moot by Conclusion of Law "A", supra.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated July 10, 1978, to be consistent with Conclusion of Law "A" determined hereto; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as hereby modified, is sustained, together with such interest as may be lawfully due and owing.

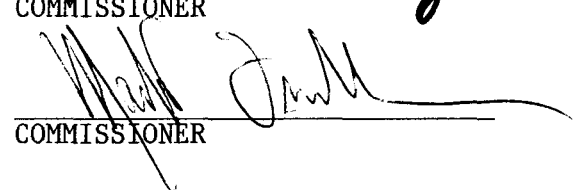
DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER