

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
David Hawkins :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income & :
Unincorporated Business Tax under Article 22 & 23 :
of the Tax Law for the Years 1979 - 1980. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of March, 1985, he served the within notice of Decision by certified mail upon David Hawkins, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Hawkins
RD #1
Bemus Point, NY 14712

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
14th day of March, 1985.

David Parchuck

Bruce W. Kugel
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
David Hawkins :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
& Unincorporated Business Tax under Articles 22 & :
23 of the Tax Law for the Years 1979 - 1980. :
:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of March, 1985, he served the within notice of Decision by certified mail upon Gerald P. Gorman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald P. Gorman
237 Main St., Suite 300
Buffalo, NY 14203

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
14th day of March, 1985.

David Parchuck

James A. Laguarda

Authorized to administer oaths
pursuant to Tax Law section 174

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

March 14, 1985

David Hawkins
RD #1
Bemus Point, NY 14712

Dear Mr. Hawkins:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Gerald P. Gorman
237 Main St., Suite 300
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID HAWKINS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1979	:	
and 1980.	:	

Petitioner, David Hawkins, RD #1, Bemus Point, New York 14712, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1979 and 1980 (File No. 45666).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York on June 26, 1984 at 10:45 A.M., with all briefs to be filed on or before July 9, 1984. Petitioner appeared by Gerald P. Gorman, Esq. The Audit Division appeared by John P. Dugan, Esq. (Debra J. Dwyer, Esq., of counsel).

ISSUES

I. Whether petitioner filed a timely petition for redetermination of an asserted deficiency of unincorporated business tax.

II. Whether the Audit Division properly determined that petitioner's rental income was subject to unincorporated business tax.

FINDINGS OF FACT

1. On April 11, 1983 the Audit Division issued a Notice of Deficiency to petitioner David S. Hawkins asserting a deficiency of unincorporated business tax in the amount of \$1,974.74 plus penalty of \$19.74 and interest of \$600.08

for a total amount allegedly due of \$2,594.56. The asserted deficiency of unincorporated business tax was premised upon the Audit Division's conclusion that petitioner's rental income was subject to unincorporated business tax.

2. On July 8, 1983 petitioner, by his representative, mailed a petition utilizing metered mail challenging the asserted deficiency of unincorporated business tax. The petition was received by the Tax Appeals Bureau on July 12, 1983.

3. During the years 1979 and 1980 Mr. Hawkins and his wife filed separately, on one return, a New York State Income Tax Resident Return. On each return, there was attached a Federal Schedule C, encaptioned Profit (or Loss) From Business or Profession, wherein net income from the sale of mobile homes was reported. This income was also reported on a New York State Unincorporated Business Tax Return during each of the years in issue. The New York State income tax return filed by Mr. Hawkins also had appended to it a Federal Schedule E, encaptioned Supplemental Income Schedule. Petitioner reported income from the sale of mobile homes on this schedule. However, Mr. Hawkins did not report income from the rental of mobile homes as subject to unincorporated business tax.

4. In 1968 petitioner purchased a parcel of land, which had previously been an abandoned farm, in Bemus Point, New York. Thereafter, petitioner cleared the land and began renting lots to individuals under the name of High Acres Mobile Home Rentals. Petitioner received a monthly rental from his tenants in exchange for their leasehold interests.

5. In 1969, Mr. Hawkins began selling mobile homes under the name of High Acres Mobile Home Sales. When Mr. Hawkins began selling mobile homes, he did not require that the individuals who purchased mobile homes rent lots from him.

Approximately five of the thirty-five mobile homes sold by petitioner in 1979 occupied lots in petitioner's mobile home court. In 1980, approximately seven of the thirty-four or thirty-five mobile homes sold by petitioner were placed in lots rented by petitioner.

6. Petitioner maintained separate checking accounts and separate books and records for the activities of selling versus renting mobile homes.

7. A lawn separates the area containing the mobile home lots and the area where the mobile homes for sale are displayed.

CONCLUSIONS OF LAW

A. That, in general, a proceeding before the State Tax Commission is commenced by the filing of a petition within ninety days of the mailing of a Notice of Deficiency [Tax Law §§689(b); 722].

B. That 20 NYCRR 601.3(c) provides:

"(c) Time limitations. The petition must be filed within the time limitations prescribed by the applicable statutory sections, and there can be no extension of that time limitation. If the petition is filed by mail, it must be addressed to the particular operating bureau in Albany, N.Y. When mailed, the petition will be deemed filed on the date of the United States postmark stamped on the envelope. Where a machine-metered stamp is used on the envelope, the petition shall be deemed filed upon receipt. The petition may also be filed with the operating bureau, by delivery, during business hours at the offices of the particular operating bureau in Albany, N.Y." (emphasis supplied).


C. That in view of the fact that the petition was received after ninety days from the time the Notice of Deficiency was issued, the petition of David S. Hawkins was untimely filed [Tax Law §§689(b); 722; 20 NYCRR 601.3(c)]. Accordingly, no determination is rendered with respect to the merits of the petition. It is noted that petitioner may pay the tax due and file a timely petition for a refund (Tax Law §§689(c); 722).

D. That the petition of David S. Hawkins is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 14 1985


PRESIDENT


COMMISSIONER


COMMISSIONER