

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Thomas & Stephanie Ossendorf :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income & :  
Unincorporated Business Taxes under Articles 22 & :  
23 of the Tax Law for the Year 1979. :  
:

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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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Thomas & Stephanie Ossendorf, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas & Stephanie Ossendorf  
P.O. Box 251  
Chatham, NY 12037

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  
15th day of April, 1985.

David Parchuck

James P. H. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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23 of the Tax Law for the Year 1979.	:	

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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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Richard P. Koskey, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard P. Koskey  
Pattison, Koskey, Rath & Florio  
502 Union Street  
Hudson, NY 12534

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  
15th day of April, 1985.

David Parchuck

James P. Hegarty  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

April 15, 1985

Thomas & Stephanie Ossendorf  
P.O. Box 251  
Chatham, NY 12037

Dear Mr. & Mrs. Ossendorf:

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  
Richard P. Koskey  
Pattison, Koskey, Rath & Florio  
502 Union Street  
Hudson, NY 12534  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions

of

THOMAS OSSENDORF AND STEPHANIE OSSENDORF

DECISION

for Redetermination of Deficiencies or for  
Refunds of Personal Income and Unincorporated  
Business Taxes under Articles 22 and 23 of the  
Tax Law for the Year 1979.

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Petitioners, Thomas Ossendorf and Stephanie Ossendorf, P.O. Box 251, Chatham, New York 12037, filed petitions for redetermination of deficiencies or for refunds of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1979 (File Nos. 39805 and 39806).

On October 2, 1984, petitioners waived a formal hearing and consented to submission of this matter to the State Tax Commission based on the entire record contained in the file, and all documents submitted with their waiver. The following decision is rendered upon the file as presently constituted.

#### ISSUES

I. Whether a cash deposit made on May 3, 1979 was income of the sole proprietorship or the corporation.

II. Whether petitioner Thomas Ossendorf, a sole proprietor on a cash basis, was required to record accounts receivable at a zero basis at the time of incorporation.

#### FINDINGS OF FACT

1. Petitioners, Thomas Ossendorf and Stephanie Ossendorf, filed separately on a combined New York State Income Tax Resident Return for 1979. Attached to said return was Form IT-202, Unincorporated Business Tax Return, which showed

petitioner Thomas Ossendorf's business name to be Chatham Installations & Welding and that said business was terminated in April of 1979.

2. On July 2, 1982, the Audit Division issued two statements of tax audit changes for the year 1979. One statement proposed personal income tax due of \$2,862.46, plus interest, and the other statement proposed unincorporated business tax of \$961.11, plus interest. The statements were issued on the ground that gross receipts were understated in the amount of \$22,892.26.<sup>1</sup> Accordingly, notices of deficiency were issued on September 17, 1982.

3. Petitioner Thomas Ossendorf was a self-employed steel fabricator who kept his books on a cash basis. He filed Federal Schedule C, Profit or (Loss) from Business or Profession, for the four month period he operated as a sole proprietorship. Federal Form 1120, U.S. Corporation Income Tax Return, was filed for the period May 1, 1979 to September 30, 1979, and CT-4, New York State Corporation Franchise Tax Report, was filed for the same short period.

4. A Certificate of Incorporation of Chatham Installations and Welding Co., Inc. was filed with the Department of State on February 9, 1979. Said certificate was executed by petitioner Thomas Ossendorf who was president and sole stockholder of said corporation.

5. The Audit Division asserted that a deposit of \$22,967.80<sup>2</sup> made on May 3, 1979 (1) represented accounts receivable accumulated by the sole proprietorship in anticipation of the incorporation and there was no valid business purpose for the transfer; (2) had not been reported as income by either the sole proprietorship or the corporation; (3) had not been entered on the corporate books as a receivable and that an adjusting entry had been made disbursing

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<sup>1-2</sup> The record is devoid as to why there is a discrepancy between the amount shown as gross receipts understated and the amount shown as a deposit on the statement of account (Finding of Fact "6", infra).

said amount to owner-stockholder, petitioner Thomas Ossendorf; and (4) had been earned (at least in part) through expenses deducted by the sole proprietorship on Schedule C and since the corporation reported no sales for the period May 1 through May 3, the deposit was income to the sole proprietorship and not income to the corporation.

Petitioners asserted that the deposit was a receivable of the corporation and taxable income to the corporation, but that no entry should have been made on the corporation's books because the receivables had a zero basis based on Revenue Ruling 69-442, IRB 1969-34.

6. Petitioner submitted a copy of a Statement of Account with State Bank of Albany which showed the name of "Chatham Installations & Welding Co., Mr. Thomas J. Ossendorf, Stephanie M. Ossendorf" and that a deposit of \$22,967.80 was made on May 3, 1979. The cash balance on April 30, 1979, which was the beginning cash balance on May 1, 1979, was \$29,761.24.

7. A copy of the Balance Sheet (Federal Schedule L) of Chatham Installations and Welding Co., Inc. showed that there were no assets, liabilities or stockholders' equity at the beginning of the corporation's taxable year on May 1, 1979.

#### CONCLUSIONS OF LAW

A. That the Balance Sheet of Chatham Installations and Welding Co., Inc. did not list any asset, liability, or equity accounts at the beginning of the corporation's taxable year on May 1, 1979, and it must be presumed that no accounts were transferred to the corporation by the sole proprietorship. It appears that the statement of account (Finding of Fact "6", supra) was that of the sole proprietorship and not that of the corporation and that the deposit of \$22,967.80 was made in the name of the sole proprietorship; therefore, the

deposit represents taxable income earned by the sole proprietorship and not the corporation. This conclusion is further evidenced by the fact that the deposit was disbursed to petitioner Thomas Ossendorf by the corporation and that no sales were made by the corporation during the period May 1 through May 3, 1979. Petitioner Thomas Ossendorf failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the deposit made on May 3, 1979 was made in the name of the corporation.

B. That no decision is being made with respect to Issue "II" since no asset, liability or proprietorship accounts were transferred to Chatham Installations and Welding Co., Inc. by the sole proprietorship.

C. That the petition of Thomas Ossendorf and Stephanie Ossendorf is denied and the notices of deficiency issued on September 17, 1982 are sustained, together with any additional interest that is owing.

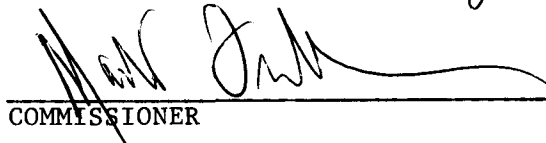
DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER