

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Daniel & Danuta Knuth :

AFFIDAVIT OF MAILING

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 Years 1979-1981.
_____ :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 14th day of November, 1986, he/she served the within notice of Decision by certified mail upon Daniel & Danuta Knuth the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel & Danuta Knuth
10703 Miller Rd.
Utica, NY 13502

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 November, 1986.

Daniel Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel & Danuta Knuth : AFFIDAVIT OF MAILING
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 Years 1979-1981. :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 14th day of November, 1986, he served the within notice of Decision by certified mail upon Michael E. Getnick, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael E. Getnick
185 Genesee St.
Utica, NY 13501

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 November, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

November 14, 1986

Daniel & Danuta Knuth
10703 Miller Rd.
Utica, NY 13502

Dear Mr. & Mrs. Knuth:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Michael E. Getnick
185 Genesee St.
Utica, NY 13501

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DANIEL KNUTH and DANUTA KNUTH : 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 Years 1979, 1980 and 1981.

Petitioners, Daniel Knuth and Danuta Knuth, 10703 Miller Road, Utica, New York 13502, 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 1979, 1980 and 1981 (File No. 41677).

A hearing was commenced before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 207 Genesee Street, Utica, New York on April 1, 1986 at 9:15 A.M., and continued to conclusion on April 4, 1986 at 9:00 A.M. Petitioner appeared by Michael E. Getnick, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether, during the years at issue, petitioners operated a business known as "The Gardenia" as a partnership or whether the business was a sole proprietorship operated only by Mr. Knuth.

FINDINGS OF FACT

1. On August 3, 1982, the Audit Division issued a Statement of Unincorporated Business Tax Audit Changes to petitioners, Daniel Knuth and Danuta Knuth, wherein the following adjustments were made:

<u>Adjustment</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
"Disallowance of wife's wages as the business is operated as a partnership	\$10,400.00	\$10,600.00	
Disallowance of workmen's compensation expense as the compensation included wife's salary. (25% disallowance)			
1980 \$955.00		\$239.00	
1981 \$967.00			\$242.00"

2. Based on the aforestated adjustments, a Notice of Deficiency was issued against petitioners on October 21, 1982 asserting additional 1979 and 1980 unincorporated business tax of \$797.30, plus interest of \$190.03, for a total due of \$987.33. Unincorporated business tax was not asserted for taxable year 1981 since the tax rate for said year was zero percent.

3. On August 3, 1982, the Audit Division also issued a Statement of Personal Income Tax Audit Changes wherein the aforestated workmen's compensation expense adjustments were made for personal income tax purposes. Accordingly, a second Notice of Deficiency was issued against petitioners on October 21, 1982 asserting additional personal income tax of \$26.47, plus interest of \$4.25, for a total due of \$30.72.

4. The Gardenia (hereinafter "the business") is a retail flower and plant shop located in the Riverside Mall in the city of Utica. The business also maintained a greenhouse located at petitioners' jointly owned residence.

5. Petitioners alleged that the business has always been operated as a sole proprietorship of Mr. Knuth and that Mrs. Knuth's status was that of a bona fide employee.

6. The business commenced operations in the latter part of 1975.

7. On June 27, 1975, petitioners filed a Business Certificate for Partners whereon they were both listed as partners. Said certificate bore the signatures of both petitioners.

8. Prior to commencing business, petitioners filed a sales tax Certificate of Registration whereon they reported that they were co-owners.

9. The lease to the Riverside Mall premises, as well as all loans made to the business were co-signed by petitioners.

10. Mr. Knuth was basically involved in the business aspect of The Gardenia while Mrs. Knuth devoted her time to making flower arrangements.

11. During the years at issue, the business filed returns as a sole proprietorship. Deductions were taken for Mrs. Knuth's compensation. Deductions were also taken for workmen's compensation insurance, a portion of which was paid with respect to Mrs. Knuth's compensation.

12. Mrs. Knuth was listed as an employee on the books of the business. Her compensation was reported as wages on the New York State Employer's Quarterly Report of Wages Paid to Each Employee, filed by the business during taxable year 1981.

13. Federal and State income taxes were withheld from Mrs. Knuth's compensation. However, social security taxes were not withheld.

14. The record contains no information with respect to Mrs. Knuth's interest, if any, in the business.

15. The record contains no indication that petitioners had entered into a written partnership agreement.

CONCLUSIONS OF LAW

A. That the determination of whether there is a partnership is to be based upon all of the facts (Matter of Edward Borkowsky and Claire Borkowsky, State Tax Commission, October 17, 1980). One factor is the "intention of the

parties determined by their acts and the character in which they have regarded their relationship." (Matter of Edward Borkowsky and Claire Borkowsky, supra.)


B. That upon review of all the facts and circumstances presented herein, it is concluded that petitioners operated The Gardenia as a partnership. All legal documents filed in conjunction with the creation of the business, including the certificate of doing business and the sales tax registration certificate, as well as all loan papers and the lease indicated a partnership was intended. Accordingly, the adjustments made by the Audit Division were proper.

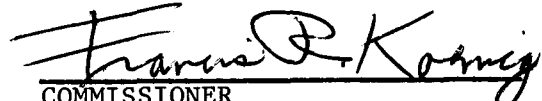
C. That the petition of Daniel Knuth and Danuta Knuth is denied and the two (2) notices of deficiency issued October 21, 1982 are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1986


PRESIDENT


COMMISSIONER


COMMISSIONER