

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Fiorello Company

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business;
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1961, 1962 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Claire A. Draves , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of January , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Arthur Zuckerman
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Arthur Zuckerman
c/o J.B. Kass and Company
420 Lexington Avenue
New York, New York 10017
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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 January , 1971.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Fiorello Company

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1961 & 1962 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Claire A. Draves , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of January , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Fiorello Company (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Fiorello Company
1 Rockefeller Plaza
New York, New York
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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 January , 1971.

Lois Wilson

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application
of
FICRELLC COMPANY
(Empl. ID No. 13-1893244)
for Redetermination of Deficiencies of
Unincorporated Business Taxes under
Article 23 for the years 1961 and 1962

Petitioner filed a petition for redetermination of deficiencies of unincorporated business taxes for the years 1961 and 1962. A formal hearing was held on June 10, 1969, in the offices of the State Tax Commission in New York City before Francis X. Boylan, Hearing Officer. The petitioner was represented by Norman Berkowitz, Esq. The Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq. of counsel).

FINDINGS OF FACT

1. Petitioner timely filed New York State partnership tax returns for the years 1961 and 1962.
2. The Income Tax Bureau under file numbered P-1462 issued a notice of deficiency to the petitioner disallowing amortization of \$30,174.94 on the 1961 partnership return and \$14,437.31 on the 1962 partnership return.

The Income Tax Bureau based this notice of deficiency on its determination that the Internal Revenue Code, Section 743(b), adjustment due to a Section 754 election was applicable to the transferee partner only but was not a partnership deduction.

3. The election under Section 754 of the Internal Revenue Code was clearly set forth on the partnership return, and the petition presents only a question of law under the New York Unincorporated Business Tax Law.

4. During the year 1960 two of the partners of the taxpayer partnership sold a portion of their interest in the partnership to

a new partner. The petitioner contended that the election to adjust partnership assets under the Internal Revenue Code also applied to the unincorporated business tax.

5. The purchase price was paid directly to the selling partners. None of the funds were directly invested in partnership assets. The assets of the partnership remained unchanged. Under these circumstances there is no adjustment of basis of partnership assets, and the election has no effect for purposes of New York Unincorporated Business Tax Law. The election allowed under the Internal Revenue Code is effective only for federal and state personal income taxes.

DECISION

A. The determinations of the deficiencies for 1961 and 1962 are sustained in file numbered P-1462.

B. Pursuant to Section 684 of the Tax Law, interest shall be added to the total amount due until the date of payment.

Dated: Albany, New York

January 12, 1971.

STATE TAX COMMISSION

Norman G. Helman
COMMISSIONER

COMMISSIONER

Milton Kerner
COMMISSIONER