

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Van Den Bout Associates,
A Partnership

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) f/y/e June 30,
1958, 1959 & 1960

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

State of New York
County of Albany

Martha Funaro , 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 12th day of April , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Bernard P.
Birnbaum, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Bernard P. Birnbaum, C.P.A.
270 Reynolds Arcade Bldg.
Rochester, 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

12th day of April 1971

Joyce S. Kass Patterson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Milton C. Van Den Bout &
Ellsworth G. Van Den Bout

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1957, 1959, & 1960

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

State of New York
County of Albany

Martha Funaro , 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 12th day of April , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Bernard P. Birnbaum, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bernard P. Birnbaum, C.P.A.
270 Reynolds Arcade Bldg.
Rochester, 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

12th day of April , 1971.

James S. Van Katten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Milton C. Van Den Bout & Ellsworth
G. Van Den Bout

For a Redetermination of a Deficiency or
a Refund of Personal Income ;
Taxes under Article(s) 16 of the
Tax Law for the Year(s) 1957, 1959, and 1960

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

State of New York
County of Albany

Martha Funaro , 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 12th day of April , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Milton C. Van Den Bout & Ellsworth G. Van Den Bout (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Milton C. Van Den Bout
115 Maple Avenue
Palmyra, 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

12th day of April /, 1972

Sworn to before me this
12th day of April, 1971
James S. Kimbatten Matthew J. Juncos

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Milton C. Van Den Bout &
Ellsworth G. Van Den Bout

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1957, 1959, & 1960

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

State of New York
County of Albany

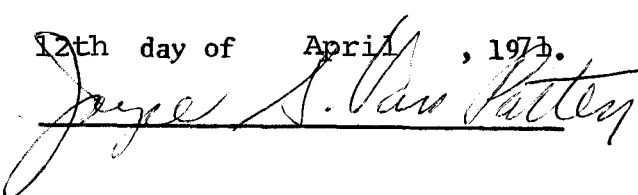
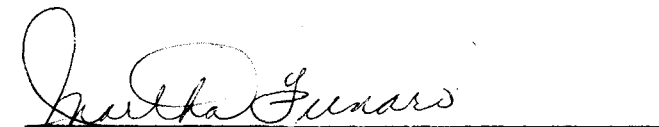
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 12th day of April , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Milton C. Van Den
Bout &
Ellsworth G. Van Den Bout (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Ellsworth G. Van Den Bout
Hyde Parkway
Palmyra, 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

12th day of April , 1971.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Van Den Bout Associates,
A Partnership

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business,
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) f/y/e June 30, 1958,
1959 and 1960.

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

State of New York
County of Albany

Martha Funaro , 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 12th day of April , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Van Den Bout
Associates, A Partner- (representative of) the petitioner in the within
ship
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Van Den Bout Associates
205 East Main Street
Palmyra, 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

12th day of April , 1971.

James S. Van Patten

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
MILTON C. VAN DEN BOUT & ELLSWORTH	:	
G. VAN DEN BOUT	:	DETERMINATION
for revision or refund of Personal Income	:	
Taxes under Article 16 of the Tax Law for	:	
the years 1957, 1959, and 1960.	:	

In the Matter of the Application	:	
	:	
of	:	
VAN DEN BOUT ASSOCIATES, A Partnership:	:	DETERMINATION
for revision or refund of Unincorporated	:	
Business Taxes under Article 16-A of the	:	
Tax Law for the fiscal years ending June	:	
30, 1958, 1959 and 1960.	:	

Taxpayers applied for revision or refund of Personal Income Taxes under Article 16, and Unincorporated Business Taxes under Article 16-A of the Tax Law for the above listed years. A formal hearing was held before Vincent P. Molineaux, Hearing Officer, in the offices of the State Tax Commission in the City of Rochester, on September 22, 1965. The taxpayers were represented by Bernard P. Birnbaum, Esq.

FINDINGS OF FACT

1. The issue in this case is whether deductions claimed by the partnership and individual taxpayers for amortization of a covenant "not-to-compete" were valid deductions under Articles 16 and 16-A of the Tax Law.

2. The above partnership is an insurance agency which formerly operated under the name of The Henry E. Mitchell Agency, a partnership consisting of the two applicants and Henry E. Mitchell.

3. By agreement, this partnership had an agreed upon value of \$70,000.00. By June 30, 1956 the Van Den Bouts had purchased Mr. Mitchell's entire interest, dissolved the partnership and established the partnership of Van Den Bout Associates.

4. The above 1952 agreement contained a covenant "not-to-compete" which read as follows:

"Any partner who withdraws pursuant to this provision shall not engage within five (5) years after his withdrawal as a partner, in the insurance business either directly or indirectly, within twenty-five (25) miles of Palmyra, New York, and shall not solicit any insurance business..."

There is no value placed upon this covenant "not-to-compete."

5. The new partnership of Van Den Bout Associates began amortizing as a deduction the above valuation of \$70,000.00 over a five year period as the cost of the covenant "not-to-compete."

6. On September 7, 1962, the following notices of additional assessments were issued based upon a determination disallowing a deduction described as amortization of a covenant "not-to-compete" as no value was assigned to such agreement.

<u>NAME</u>	<u>ASSESSMENT NO.</u>	<u>YEAR</u>	<u>AMOUNT</u>
MILTON C. VAN DEN BOUT	FA95782	1957	\$465.37
"	FA95783	1959	641.70
"	FA95784	1960	425.10
ELLISWORTH G. VAN DEN BOUT	FA95785	1957	475.61
"	FA95786	1959	566.71
"	FA95787	1960	389.84
VAN DEN BOUT ASSOCIATES	FA95779	f/y/e 6/30/58	448.00
"	FA95780	f/y/e 6/30/59	448.00
"	FA95781	f/y/e 6/30/60	505.40

DETERMINATION

A. The cost of the covenant "not-to-compete" in the 1952 partnership agreement is not severable from any cost of good will paid by the taxpayers.

B. The aggregate sum of \$70,000.00 paid by the applicants to Henry E. Mitchell represents their purchase of proprietary interests in the Henry E. Mitchell Agency, a partnership. As such, it is not subject to amortization for income tax purposes.

C. The applications are, therefore, denied and the additional assessments sustained, together with such interest as may be lawfully due.

DATED: Albany, New York

April 12, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER