

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID ALEXANDER

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

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) 1964, 1965 & 1966

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 26th day of July, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon David Alexander (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: David Alexander
Diddell Road
Wappingers Falls, 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

26th day of July, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DAVID ALEXANDER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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) 1964, 1965 & 1966

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 26th day of July , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Frederick C. Lynch
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Frederick C. Lynch
c/o D'Arcangelo, Clark & Co., C.P.A.'s
210 Harrison Avenue
Harrison, New York 10582
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

26th day of July , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 26, 1972

**David Alexander
Diddell Road
Happingers Falls, New York**

Dear Mr. Alexander:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DAVID ALEXANDER	:	DECISION
	:	
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1964, 1965 and 1966.	:	
	:	

Petitioner, David Alexander, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964, 1965 and 1966. (File No. 66750147). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York for December 14, 1971, at 10:45 A.M. On November 30, 1971, petitioner's representative, Frederick C. Lynch, C.P.A., waived a formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Were the services rendered by petitioner, David Alexander, during the years 1964, 1965 and 1966 as an officer of Poughkeepsie Asphalt, Inc., Circle Sand & Gravel, Inc., Alexander Equipment, Inc. and David Alexander, Inc., so interrelated and integrated with his activities in connection with his unincorporated business as an excavation contractor as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, David Alexander, filed New York State unincorporated business tax returns for the years 1964, 1965 and 1966. He reported as taxable income on said returns the net income received by him from his unincorporated excavation contracting business, but omitted from taxable income the salaries paid to him by Poughkeepsie Asphalt, Inc., Circle Sand and Gravel, Inc., Alexander Equipment, Inc. and David Alexander, Inc.

2. On April 10, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, David Alexander, imposing unincorporated business tax upon the salary income received by him from Poughkeepsie Asphalt, Inc., Circle Sand & Gravel, Inc., Alexander Equipment, Inc. and David Alexander, Inc. during the years 1964, 1965 and 1966 and accordingly issued a Notice of Deficiency in the sum of \$3,710.47.

3. Petitioner, David Alexander, conducted an unincorporated business as an excavation contractor during the years 1964, 1965 and 1966. His activities as the owner of said business consisted primarily of negotiating job contracts, estimating and budgeting job costs and managing and supervising field personnel. The activities of the unincorporated business consisted primarily of small jobs such as digging foundations for private homes. He employed 30 to 40 people. His net income from the unincorporated business was \$17,366.10 in 1964, \$15,074.57 in 1965, and \$35,985.91 in 1966.

4. Poughkeepsie Asphalt, Inc. was engaged in the manufacture and sale of asphalt used in the construction of roads, parking lots, driveways and similar facilities during the years 1964, 1965 and 1966.

The product was sold primarily to general contractors who performed the paving operations. Approximately 15% of its production was sold to petitioner, David Alexander, and to David Alexander, Inc. It owned two asphalt plants, trucks and other equipment. It employed approximately 15 people.

5. Petitioner, David Alexander, was president and the owner of 90% of the stock of Poughkeepsie Asphalt, Inc. during the years 1964, 1965 and 1966. He received a salary from said corporation of \$2,587.80 in 1964, \$16,182.40 in 1965, and \$16,480 in 1966. Federal and New York State income taxes and social security tax were withheld from the compensation paid to him. The services rendered by him for said corporation consisted primarily of negotiating sales contracts, supervising employees and transacting miscellaneous corporate business as executive officer.

6. Circle Sand & Gravel, Inc. was engaged in the mining, manufacture and sale of sand and gravel to be used in the construction and repair of concrete buildings and roads and in combatting snow and ice conditions during the years 1964 and 1965. Approximately one half of its sales were made to Poughkeepsie Asphalt, Inc. It owned its own trucks and processing equipment. It employed approximately ten people. The gravel pit was owned by petitioner, David Alexander. He received rent from the corporation and took the depletion allowance on his tax returns.

7. Petitioner, David Alexander, was the president and owner of 66 2/3% of the stock of Circle Sand & Gravel, Inc. during the years 1964 and 1965. He received a salary from said corporation of \$7,150.40 in 1964 and \$3,268.80 in 1965. Federal and New York State income taxes

and social security tax were withheld from the compensation paid to him. The services rendered by him for the corporation consisted of managing the mining and manufacturing operations, directing the marketing function, supervising all employees and transacting general corporate business as executive officer.

8. Alexander Equipment, Inc. was engaged in the business of renting heavy equipment, such as bulldozers, loaders and trucks, during the years 1964, 1965 and 1966. The equipment was rented primarily to petitioner, David Alexander's sole proprietorship and also to outsiders when not being used in his own activities. Rental rates were based upon the "green book" which was a standard set by the national association in the field. It owned the equipment which it rented. It employed five to ten people.

9. Petitioner, David Alexander, was president and sole owner of the stock of Alexander Equipment, Inc. He received a salary from the corporation of \$10,920.00 in 1964, \$10,920.00 in 1965 and \$12,480.00 in 1966. Federal and New York State income taxes and social security tax were withheld from the compensation paid to him. The services rendered by him for said corporation consisted of managing the rental operations, negotiating equipment purchases and sales, supervising employees and transacting general corporate business as executive officer.

10. David Alexander, Inc. was engaged in the business of general contracting for large, high risk, fixed fee construction jobs during the year 1964. It employed 30 to 40 people. Some of its employees also worked for the sole proprietorship.

11. Petitioner, David Alexander, was the president and sole stockholder of David Alexander, Inc. during the year 1964. He received

a salary of \$5,000.00 during said year. The services rendered by him for said corporation consisted of negotiating job contracts, supervising field operations, managing job cost control and transacting general corporate business as executive officer.

12. Petitioner, David Alexander, owned an office building and garage facilities located on New Hackensack Road in Wappinger Falls, New York, during the years 1964, 1965 and 1966. The sole proprietorship, Alexander Equipment, Inc. and David Alexander, Inc. operated from said premises. The corporations paid rent to the sole proprietorship for the use of the premises. The operations of Poughkeepsie Asphalt, Inc. and Circle Sand & Gravel, Inc. were conducted at separate facilities located on Sheafe Road in Wappinger Falls, New York. Each of the entities maintained their separate books and records, bank accounts and tax returns. Each of the entities did their own purchasing. All intercompany transactions were reflected on the books of the respective entities. Each of the entities hired its own employees and maintained separate payroll records. Some of the employees of the sole proprietorship were also employed by David Alexander, Inc. All bookkeeping activities for all of the entities were conducted at the office of the sole proprietorship. Poughkeepsie Asphalt, Inc. and Circle Sand & Gravel, Inc. and the sole proprietorship maintained their own telephone listings. The other entities were not listed.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, David Alexander, as an officer of Poughkeepsie Asphalt, Inc., Circle Sand & Gravel Inc., Alexander Equipment, Inc. and David Alexander, Inc. were not so integrated and interrelated with his activities in connection with his

unincorporated business as to constitute part of a business regularly carried on by him and, therefore, the salaries received by him as an officer of said corporations were exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, David Alexander, as an officer of Poughkeepsie Asphalt, Inc., Circle Sand & Gravel, Inc., Alexander Equipment, Inc. and David Alexander, Inc. did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of David Alexander is granted and the Notice of Deficiency issued April 10, 1968, is cancelled.

DATED: Albany, New York

July 26, 1972

STATE TAX COMMISSION

Norman Gallen

COMMISSIONER

Robert Mawley

COMMISSIONER

Walter Cohen

COMMISSIONER