

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WAD RENT A TRUCK CO.

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)~~ Fiscal Year ended
January 31, 1967.

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 16th day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Wad Rent A
Truck Co. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Wad Rent A Truck Co.

911 Main Street, East
Rochester, New York 14605

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

16th day of May , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WAD RENT A TRUCK CO.

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)/Fiscal Year ended
January 31, 1967

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 16th day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Lester E. Stone, 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: Lester E. Stone, C.P.A.
1705 Liberty Bank Building
Buffalo, New York 14202

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

16th day of May, 1972

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 16, 1972

Mad Rent A Truck Co.
911 Main Street, East
Rochester, New York 14605

Gentlemen:

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 decision must be commenced
within **4 Months** after 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 relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
L. Robert Leisner
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

WAD RENT A TRUCK CO.

for a Redetermination of a Deficiency or
for Refund of Unincorporated Business Taxes
under Article 23 of the Tax Law for the
Fiscal Year ended January 31, 1967.

DECISION

Wad Rent A Truck Co. petitioned for a redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the fiscal year ended January 31, 1967.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on June 25, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Lester E. Stone, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Were profits derived from installment obligations of a liquidating partnership distributed to partners subject to an unincorporated business tax applied to the partnership?

FINDINGS OF FACT

1. Petitioner, a dissolved partnership, timely filed New York State unincorporated business tax returns for the period January 31, 1967, signed and executed on February 3, 1967.

2. Notices of deficiencies in unincorporated business tax for the fiscal year were issued on December 16, 1968 against Wad Rent A Truck Co. and also against Phillip Panfiel, Philip Neivert,

Alan Weinberg, Charles Goodman and Robert Feinglass under File No. 4628. The Statement of Audit Changes also indicated that Jack J. Feinglass as well as Charles Goodman, Philip Neivert, et al., individually and as copartners did business as Wad Rent A Truck Co.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The petitioner, Wad Rent A Truck Co. was a partnership on an accrual basis. It filed a partnership and unincorporated business tax returns for the year ended January 31, 1966, and a final return reporting an installment sale of the partnership equipment in return for notes. The gain on the installment obligations was \$32,747.64 during the year ended January 31, 1967.

5. The petitioner contended that it dissolved on January 31, 1966, and it realized no gain on this sale as it dissolved and distributed the notes held by the partnership to the partners and each partner's share was not sufficient to subject him to unincorporated business tax.

6. These installment obligations were paid by the purchaser to an agent of the partners who broke the payments down through an agency bank account and paid the former partners.

7. The Income Tax Bureau determined that this gain was a partnership profit and the unincorporated business tax was applicable to the partnership and the partnership and partners were liable for the tax.

CONCLUSIONS OF LAW

A. The sale of business assets of an unincorporated business is subject to unincorporated business tax.

B. The Wad Rent A Truck Co. was a "liquidating partnership" by virtue of its liquidating, and it was a partnership in liquidation

under section 703(a) of the Tax Law. The statute was designed to cover liquidation income, and all profits derived either through the collection of installment obligations outstanding or through the sale of other assets in the course of the liquidation. New York State 1952 Legislative Annual, page 349; Louis Berry, David & Bernice Miro, et al., State Tax Comm. Dec., January 11, 1971.

C The partnership and all of the partners are liable for the unincorporated business tax as determined by the Income Tax Bureau.

D. Pursuant to the Tax Law, interest shall be added to the total due until paid.

DATED: Albany, New York

May 16, 1972

STATE TAX COMMISSION

COMMISSIONER

Bruce Hawley

COMMISSIONER

Milton Krimer

COMMISSIONER