

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY BRAWDY

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 :
and 1963.

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

State of New York
County of Albany

Lynn Wilson , 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 23rd day of February , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon HARRY BRAWDY

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Harry Brawdy
Milestrip Road
North Collins, 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

23rd day of February , 1973

Franklin J. [Signature]

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY BRAWDY

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 :
and 1963.

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

State of New York
County of Albany

Lynn Wilson , 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 23rd day of February , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon VICTOR A.

CARRIERO (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Victor A. Carriero
10549 Main Street
North Collins, 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

23rd day of February , 1973.

Martha J. Mendez

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 23, 1973

Mr. Harry Brawdy
Milestrip Road
North Collins, New York

Dear Mr. Brawdy:

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

Please take further notice that pursuant to **section 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

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	:	
	:	
HARRY BRAWDY	:	DECISION
	:	
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961, 1962, and 1963.	:	

The taxpayer petitioned for a redetermination of a deficiency on unincorporated business taxes for the years 1961, 1962 and 1963. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on May 19, 1971.

The taxpayer who appeared in person was represented by Leo Fallon, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were amounts received by the taxpayer, for services as a truck driver to be added to his unincorporated business income derived from the leasing of trucking equipment?

FINDINGS OF FACT

1. Petitioner Harry Brawdy timely filed personal income tax returns for the years 1961, 1962 and 1963 and unincorporated business tax returns for the years 1961 and 1962 with his personal income tax returns. Harry Brawdy reported wages of \$4,402.50 for 1961, \$5,979.75 for 1962, and \$5,884.10 for 1963, received from Iroquois Oil Corporation or William A. Evans. From leasing of trucking equipment,

he reported unincorporated business income in the amount of \$9,423.11 for 1961, and \$3,583.04 in 1962. The amount of income from leasing in 1963 was not large enough to be taxable and no return was filed.

2. On February 14, 1966, under File No. 3-5110198 the Income Tax Bureau issued a Notice of Deficiency including salary income reported by the taxpayer as additional business income subject to the unincorporated business tax. Petitioner requested a hearing.

3. Prior to 1960 the taxpayer had a lease agreement with Mr. Evans or the oil corporation which provided for rental of equipment in a total package for driving and use of equipment to be paid at a rate of so much a gallon per mile. The Federal Interstate Commerce Commission declared the operation not to be legal. Thereafter, Mr. Evans or the oil corporation leased the equipment and hired the drivers as employees.

4. In 1961, 1962 and 1963 Mr. Brawdy was paid for his services as a driver. On occasion he would operate his own equipment and on occasion he would operate equipment belonging to others.

5. Each week the taxpayer received two envelopes, one envelope with payment to him as an employee for driving a truck, and another envelope for the rental of equipment.

6. During each of the years in issue the taxpayer was paid a precise amount for his services in driving a truck with deductions for withholding of income taxes and social security taxes. The taxpayer was paid a separate, precise amount for equipment rental.

7. Mr. Brawdy's wife sent a bill every week for equipment rental to Mr. Evans and retained one for Mr. Brawdy. Mr. Brawdy provided for the expenses, and the lubrication, and oiling of the equipment.

8. The taxpayer had to be on call Monday through Friday to drive and he also worked Saturdays and Sundays at times, and normally his workday as a driver started at 6:00 or 7:00 o'clock in the morning, until 4:00, 5:00 or 6:00 at night depending on where he had to go.

9. Mr. Brawdy worked continuously and regularly as a truck driver and he was a member of the truck driver's union during all the years in issue. Union dues were deducted from his pay.

10. Mr. Brawdy took two weeks vacation each year and he was paid for the vacation.

11. Mr. Brawdy, who had lost a portion of his arm, was covered by workmen's compensation, unemployment insurance, and disability benefits.

12. He was covered for other benefits in all respects as other employees including clerical and nonunion help employed by Mr. Evans, including Blue Shield and Blue Cross, and all other group plans.

CONCLUSIONS OF LAW

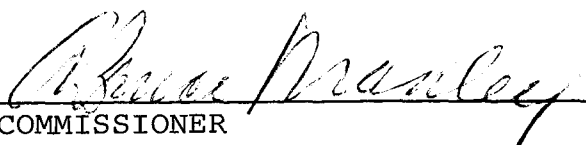
A. The amounts received by the taxpayer during the years in issue for services as a truck driver constituted wages paid to an employee and were not subject to unincorporated business tax.


B. The taxpayer's petition is sustained and it is determined that there are no deficiencies in unincorporated business tax against the taxpayer for the years 1961, 1962 and 1963.

DATED: Albany, New York
February 23, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER