

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

A. FORTIN SONS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Unincorporated Business  
Taxes under Article(s) 23 of the  
Tax Law for the Year(s) ~~or Period(s)~~  
1970 and 1971.

State of New York  
County of Albany

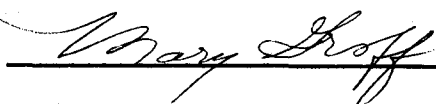
Janet Mack, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 3rd day of December, 1976, she served the within  
Notice of Decision by (certified) mail upon A. Fortin Sons  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: A. Fortin Sons  
23 1/2 Lafayette Street  
Plattsburgh, NY 12901

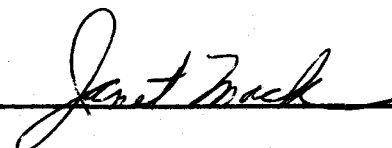
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
~~of the~~) 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

3rd day of December, 1976.

  
\_\_\_\_\_

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
A. FORTIN SONS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~1970 and 1971~~ :  
1970 and 1971.

State of New York  
County of Albany

Albany, 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 3rd day of December, 1976, she served the within  
Notice of Decision by (certified) mail upon William A. McKnight,  
CPA (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: William A. McKnight, CPA  
Carella & McKnight  
10 Second Street  
Troy, NY 12180  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) 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

3rd day of December, 1976

Mary G. Hoff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 3, 1976

457-3850

TELEPHONE: (518)

A. Fortin Sons  
23 1/2 Lafayette Street  
Plattsburgh, NY 12901

Gentlemen:

**DECISION**

Please take notice of the  
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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

*Frank J. Puccia*

Frank J. Puccia  
Supervisor of  
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
A. FORTIN SONS	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1970 and 1971.	:	

---

Petitioner, A. Fortin Sons, 23 1/2 Lafayette Street, Plattsburgh, New York 12901, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1970 and 1971. (File No. 1521). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on July 26, 1976, at 9:15 A.M. Petitioner appeared by William A. McKnight, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

ISSUE

Is income derived from the rental of real property and the operation of a motel subject to the unincorporated business tax imposed under Article 23 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, A. Fortin Sons, filed New York State partnership returns for 1970 and 1971.

2. On February 25, 1974 and April 14, 1975, the Income Tax Bureau issued notices of deficiencies against petitioner, A. Fortin Sons, for the taxable years 1970 and 1971 respectively. The Income Tax Bureau asserted that income derived

from the rental of real estate and operation of a motel was considered to be part of the partnership business income subject to the unincorporated business tax under Article 23 of the Tax Law.

3. Petitioner, A. Fortin Sons, is a partnership located in Plattsburgh, New York. Henry J. Fortin and Leo P. Fortin each owned a 50% interest in the partnership. The partnership exists for the primary purpose of operating a retail fuel oil dealership. Approximately 90% of the gross receipts of the partnership are attributable to the fuel oil business. The partnership also reports income from the Goldengate Beach Motel in Plattsburgh and three parcels of real property from which it derives the remaining 10% of the reported gross receipts. It was the income from this motel and the three parcels of real property which the Income Tax Bureau held subject to the unincorporated business tax.

4. The Goldengate Beach Motel located in Plattsburgh, New York was acquired on September 11, 1967 by Henry J. Fortin and Leo P. Fortin as tenants in common. The motel was included as an asset on the partnership returns. The motel consists of 50 furnished units of which about 12 units serve transient guests; the balance are efficiency apartments. There was no bar or restaurant located on the premises.

5. The three parcels of real estate which produced rental income were listed as assets on the partnership returns of A. Fortin Sons and consisted of a gas station, a warehouse and an apartment house. These properties were not contiguous with any other property owned by the partnership. The activities relative to these properties were limited to collecting the rents and management of said properties.

6. Separate books of account were kept for the motel, the real property rentals and the fuel oil operation.

7. Petitioner, A. Fortin Sons, contends that the motel and real estate operations conform to section 703(e) of the Tax Law and that the income derived therefrom is exempt from the unincorporated business tax.

CONCLUSIONS OF LAW

A. That the receipts derived from the rental of three parcels of real property consisting of a gasoline station, a warehouse and an apartment house are not subject to the unincorporated business tax within the meaning and intent of section 703(e) of the Tax Law.

B. That the receipts derived from the operation of the motel are subject to the unincorporated business tax as imposed under Article 23 of the Tax Law and under former unincorporated business tax regulations pursuant to Article 16A of the Tax Law.

C. That the petition of A. Fortin Sons is granted to the extent that income of \$4,353.52 for 1970 and \$3,698.70 for 1971 derived from the rental of three parcels of real property is not subject to the unincorporated business tax in accordance with section 703(e) of the Tax Law. That the Income Tax Bureau is hereby directed to accordingly modify the notice of deficiencies issued February 25, 1974 and April 14, 1975, and that except as so granted the petition is in all other respects denied.

DATED: Albany, New York  
December 3, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER