

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TIBOR HORVATH

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) ~~XXXXXX~~ :
1960, 1961, 1962 and 1963.

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 18th day of November , 1976 , she served the within
Notice of Decision by (certified) mail upon Tibor Horvath
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Tibor Horvath
555 Madison Avenue
New York, NY 10022
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

18th day of November , 19 76

Mary Gross

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TIBOR HORVATH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (X) 23 of the :
Tax Law for the Year(s) ~~1960, 1961, 1962 and 1963.~~ :
1960, 1961, 1962 and 1963.

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 18th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Jack Diamond, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jack Diamond, CPA
570 7th Avenue
New York, NY 10018
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

18th day of November, 1976

Mary Goff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

November 18, 1976

ADDRESS YOUR REPLY TO

457-3850

TELEPHONE: (518)

Mr. Tibor Horvath
555 Madison Avenue
New York, NY 10022

Dear Mr. Horvath:

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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
TIBOR HORVATH	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1960,	:	
1961, 1962, and 1963.	:	

Petitioner, Tibor Horvath, of 555 Madison Avenue, New York, New York 10022, has filed petitions for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961, 1962 and 1963. (File No. 00450). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 16, 1976 at 10:30 A.M.

The petitioner appeared by Jack Diamond, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of Counsel).

ISSUE

Whether the receipt of commissions by petitioner in New York State during the years 1960 through 1963 on sales made by a company in Chile, S.A. pursuant to a 1951 agreement constituted the carrying on of an unincorporated business in New York subject to unincorporated business tax under Tax Law, section 703.

FINDINGS OF FACT

1. Petitioner, Tibor Horvath, timely filed New York State income tax returns for each of the years 1960 through 1963. He did not file unincorporated business tax returns as an individual for any of the years 1960 through 1963. A partnership, of which petitioner was a member, did file unincorporated business tax returns in each of the years in question.

2. A Notice of Deficiency for unincorporated business tax was issued April 13, 1964 against the petitioner, Tibor Horvath, for the year of 1960. On the same date a Statement of Audit Changes was issued in regard to business income during 1960, indicating a tax due of \$987.28 plus interest of \$177.47 for a total of \$1,164.75. On May 20, 1974, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Audit Changes showing unincorporated business tax liability for the years 1961, 1962, and 1963. That liability was based upon the determination of the State Tax Commission dated August 24, 1973 for the tax year 1957. The decision held that petitioner, Tibor Horvath, had reported as other income his commission income, and that such income was subject to unincorporated business tax. Tax liability was detailed:

	<u>Deficiency</u>	<u>Interest</u>	<u>Total</u>
1961	\$ 317.94	\$ 230.77	\$ 548.71
1962	550.85	366.77	917.62
1963	<u>487.22</u>	<u>295.17</u>	<u>782.39</u>
Total	\$1356.01	\$ 892.71	\$2248.72

3. The petitioner, Tibor Horvath, timely filed petitions for redetermination of unincorporated business taxes for the year 1960, and for the years 1961 through 1963.

4. Petitioner, Tibor Horvath, was in business for a number of years as a self-described commission agent with an office at 515 Madison Avenue, New York City. In 1955 petitioner, Tibor Horvath, entered into a partnership under the name of Horvath Trading Co. which was described as an export agency located at 515 Madison Avenue, New York City. The Horvath Trading Co. partnership filed unincorporated business tax returns for the years 1960 through 1963, but the income received by petitioner, Tibor Horvath, from the Chilean export partnership was reported on only petitioner's individual income tax returns. Petitioner, Tibor Horvath, claimed that this income was derived from sources outside the United States as the result of a single transaction in 1951.

5. The determination of the State Tax Commission dated August 24, 1973 including findings of fact that the sums paid petitioner, Tibor Horvath, "...originated from an agreement entered into 1951 between applicant and a Chilean partnership. It was agreed that the partnership of Compania Minerva Santa Barbara, a mining company, would pay a commission to applicant on all iron exports they sent to the United States in consideration of applicant introducing said partnership to a selling corporation in Chile. This agreement was contained in correspondence sent from said mining

company in Chile to applicant in New York City. Applicant began to receive these commissions on a continuing basis since 1955 on his own account and did not attribute said commissions to the partnership of Horvath Trading Co."

6. Petitioner, Tibor Horvath, did not have an individual office in New York or elsewhere during the years 1960 through 1963. He performed no services other than in the Horvath Trading Co. partnership entity.

7. The petitioner, Tibor Horvath, produced no Federal income tax returns, no state partnership tax returns, and no other data to show the sources and amounts of his income respectively from the Horvath Trading Co. partnership and from the commissions attributable to the Chilean export arrangement.

CONCLUSIONS OF LAW

A. That petitioner, Tibor Horvath, was engaged in an unincorporated business for the years 1960, 1961, 1962 and 1963 on his own account as a commission agent pursuant to section 703 of the Tax Law. The continuity of payments together with the background of the petitioner, Tibor Horvath, in this type of business constituted the carrying on of an unincorporated business within the intent and meaning of the Tax Law, section 703.

B. That the petitioner, Tibor Horvath, has failed to carry his burden of proof to show that his place of transacting business with Campania Minerva Santa Barbara was outside of New York State.

The entire income in commissions received by petitioner, Tibor Horvath, from Compania Minerva Santa Barbara is subject to unincorporated business tax pursuant to section 703 of the Tax Law.


C. That the Notices of Deficiency dated April 13, 1964 and May 20, 1974 are sustained and the petitions of Tibor Horvath dated May 5, 1964 and June 21, 1974 are denied.

DATED: Albany, New York
November 18, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER