

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH E. and PHYLLIS HILL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (23) 23 of the :
Tax Law for the Year ~~(1968)~~ 1968. :

State of New York
County of Albany

Bruce Batchelor , 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 April , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Kenneth E. & Phyllis
Hill ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. & Mrs. Kenneth E. Hill
RD #2, Sagetown Road
Pine City, New York 14871

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)~~
~~XXXXXX~~ 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 April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH E. and PHYLLIS HILL

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) or Period(s)~~ 1968.:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, 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 April, 1977, she served the within
Notice of Decision by (certified) mail upon Edgar Denton
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edgar Denton, Esq.
Denton, Moseson & Keyser
200 William Street
Elmira, New York 14901
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

26th day of April, 1977.

Bruce Batchelor

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

April 26, 1977

TELEPHONE: (518) **487-1723**

Mr. & Mrs. Kenneth E. Hill
RD #2, Sagetown Road
Pine City, New York 14871

Dear Mr. & Mrs. Hill:

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

Please take further notice that pursuant to
Section(2) **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. Puccio
Frank J. Puccio
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	:	
	:	
KENNETH E. and PHYLLIS HILL	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1968.	:	

Petitioners, Kenneth E. and Phyllis Hill, residing at RD #2, Sagetown Road, Pine City, New York 14871, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1968. (File No. 8-12201840).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on October 20, 1976, at 10:45 A.M. Petitioners appeared with their representative, Edgar Denton, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Richard Kaufman, Esq., of counsel).

ISSUE

Were the services rendered by petitioner, Kenneth E. Hill, as an employee of Bedzyk-Hill Electric Co., Inc. during the year 1968, so interrelated and integrated with his activities in connection with his unincorporated business, Hill Electric, as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioners, Kenneth E. and Phyllis Hill, filed a New York State combined personal income tax return for 1968. Petitioner, Kenneth E. Hill, also filed an unincorporated business tax return for said year in which he omitted salary income received from Bedzyk-Hill Electric Co., Inc. The Income Tax Bureau held that this salary income was business connected and therefore subject to unincorporated business tax. A Notice of Deficiency was issued July 31, 1972, in the amount of \$470.45 additional unincorporated business tax due, plus \$92.98 interest, for a sum of \$563.43.

2. Petitioners, Kenneth E. and Phyllis Hill, paid this amount plus additional accrued interest for a total sum of \$615.43, and filed a claim for credit or refund. The Income Tax Bureau denied the claim on August 25, 1975.

3. Petitioner, Kenneth E. Hill, was an officer of Bedzyk-Hill Electric Co., Inc., which was located in Elmira, New York. He was also the sole proprietor of Hill Electric which he operated from his home in New City, New York.

4. Bedzyk-Hill Electric Co., Inc. and Hill Electric had separate bank accounts, separate sets of accounting books, separate and different type employees and separate telephone listings. The corporation and the unincorporated business were located in different cities and were not involved with each other in any manner. The corporation had its own bookkeeper, it used its own specialized equipment and electrical installations were made only in large new construction projects such as a hospital and an airport.

Petitioner, Kenneth E. Hill, supervised the work at the project sites and worked regular hours daily. He was covered by workmens compensation by the corporation. He was issued a wage and tax statement and deductions were made from his compensation for social security, Federal and New York State taxes.

5. Petitioner, Kenneth E. Hill's unincorporated business had two employees. In the morning, before leaving for work at the corporation, petitioner, Kenneth E. Hill, assigned the days duties to his employees. Their work consisted of minor electrical repairs and wiring in private homes. The employees used their own tools. Petitioner, Kenneth E. Hill's wife rendered services as to bookkeeping and telephone calls.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Kenneth E. Hill, as an officer and employee of Bedzyk-Hill Electric Co., Inc. during the year 1968 were not so integrated and interrelated with his activities in connection with his unincorporated business, Hill Electric, so as to constitute part of a business regularly carried on by him; and therefore, the salary received by him as an officer of said corporation was 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, Kenneth E. Hill, as an officer of Bedzyk-Hill Electric Co., Inc. during the year 1968 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 Kenneth E. and Phyllis Hill for refund of unincorporated business tax paid is granted, and the Income Tax Bureau is directed to refund the amount of \$615.43 paid plus any interest lawfully due and owing.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER