

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CLEMENTINE MC DERMOTT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of **Unincorporated Business**  
Taxes under Article ~~(ss)~~ 23 of the  
Tax Law for the Year(s) ~~xxxxxx~~ ~~(x)~~  
1969, 1970, 1971 and 1972.

State of New York  
County of Albany

Marsina Donnini, 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 22nd day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Clementine McDermott

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Miss Clementine McDermott  
Salem, New York 12865

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

22nd day of August, 1977

Marsina Donnini

Janet M. [Signature]

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CLEMENTINE MC DERMOTT

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) ~~or Period(s)~~ :  
1969, 1970, 1971 and 1972.

State of New York  
County of Albany

Marsina Donnini, 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 22nd day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Frank V. Williams

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Frank V. Williams, CPA  
Edwards, Williams, McManus & Ricciardelli, P.C.  
P.O. Box 599, Quaker Village  
Glens Falls, New York 12801

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

22nd day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**August 22, 1977**

**Miss Clementine McDermott  
Salem, New York 12845**

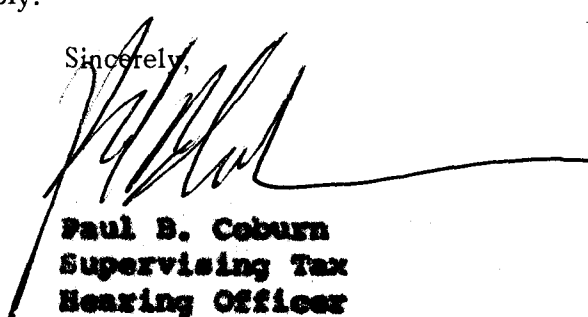
**Dear Miss McDermott:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**Paul B. Coburn  
Supervising Tax  
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CLEMENTINE MC DERMOTT	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1969,	:	
1970, 1971 and 1972.	:	

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Petitioner, Clementine McDermott, Salem, New York, filed a petition for redetermination of a deficiency or for a refund of unincorporated business tax under Article 22 of the Tax Law for the years 1969, 1970, 1971 and 1972.

(File No. 00568)

A formal hearing was held before Louis M. Klein, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on February 14, 1977 at 2:45 p.m. Petitioner appeared by Edwards, Williams, McManus, and Ricciardelli, P.C. (Frank V. Williams, C.P.A.) The Income Tax Bureau appeared by Peter Crotty, Esq. (Marilyn Kaltenborn, Esq., of counsel).

ISSUE

Whether the nursing home operated by petitioner, Clementine McDermott, during the years 1969 through 1972 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Clementine McDermott, timely filed returns and paid unincorporated business taxes for the years 1969, 1970, 1971 and 1972.

2. On April 12, 1973, petitioner executed a Claim for Credit or Refund of Personal Income Tax and/or Unincorporated Business Income Tax for the year 1969. On May 17, 1973, petitioner executed claims for credit or refund of personal income taxes and/or unincorporated business income taxes for the years 1970, 1971 and 1972.

3. On September 9, 1974, the Income Tax Bureau issued a Notice of Disallowance of petitioner's claims for refund.

4. Petitioner filed a petition for redetermination of a deficiency or for refund of personal income tax or unincorporated business tax for the years 1969 through 1972, inclusive, on January 21, 1975.

5. The petitioner was a registered nurse and the operator of the Salem Nursing Home during the years 1969 through 1972, inclusive.

6. In addition to her nursing duties, the petitioner admitted patients, kept employee time-sheets and generally supervised the operation of the nursing home which employed approximately 12 to 14 employees.

7. Nursing homes are not permitted, by law, to incorporate.

8. Nursing is recognized as an exempt profession by the regulations of the New York State Tax Commission.

9. Petitioner testified that she did not know the approximate fair market value of the nursing home; likewise she did not know what percentage of the gross income of the nursing home was used to pay employee wages, nor did she know what percentage of the gross income of the nursing home was used to pay its operating expenses. No proof was offered by petitioner in any of these areas.

CONCLUSIONS OF LAW

A. That section 703(C) of the Tax Law states as follows: "Professions. - The practice of law, medicine, dentistry or architecture, and the practice of any other profession in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the individual or other entity, shall not be deemed an unincorporated business."

B. That petitioner, Clementine McDermott, had the burden of proving that capital was not an income producing factor in her nursing home operation, and that at least 80% of the gross income of her nursing home operation was derived from personal services actually rendered in order to qualify as an exempt profession under section 703(C) of the Tax Law.

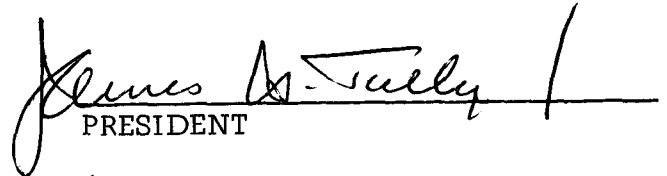
C. That petitioner, Clementine McDermott, failed to sustain her burden of proof.


D. That petitioner was engaged in an unincorporated business during the years 1969, 1970, 1971 and 1972, and was subject to the payment of unincorporated business tax.

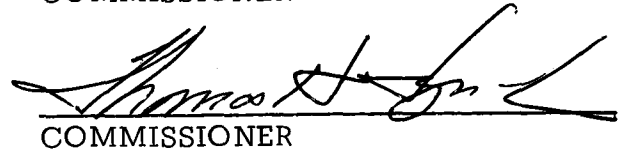
E. That the petition of Clementine McDermott is denied, and the Notice of Disallowance issued by the Income Tax Bureau on September 9, 1974 is sustained.

DATED: Albany, New York  
August 22, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER