

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN W. NEWELL

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)~~ 1971.:
~~(s) or Period(s)~~

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of January , 1977 , he served the within
Notice of Decision by (certified) mail upon John W. Newell

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. John W. Newell
1818 Edgemere Drive
Rochester, New York 14612

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)~~
~~(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

14th day of January , 1977.

Bruce Batchelor

John W. Newell

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN W. NEWELL

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 (x) 1971. :

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of January , 19 77, he served the within
Notice of Decision by (certified) mail upon Irwin S. Schulman
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Irwin S. Schulman, CPA
Davie, Schulman, Kaplan & Braverman
600 Reynolds Arcade Building
Rochester, New York 14614
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

14th day of January , 19 77

Bruce Batchelor

Just 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

January 14, 1977

TELEPHONE: (518) **457-1723**

Mr. John W. Newell
1818 Edgemere Drive
Rochester, New York 14612

Dear Mr. Newell:

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

Please take further notice that pursuant to
Section(x) **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
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	:	
JOHN W. NEWELL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Year 1971.	:	

Petitioner, John W. Newell, residing at 1818 Edgemere Drive, Rochester, New York 14612, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1971. (File No. 2-26064380).

A small claims hearing was held August 13, 1976 at 10:45 a.m. at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, before Harry Huebsch, Hearing Officer. Petitioner, John W. Newell, appeared with his representatives, James Booth and Clifford Dirkes. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUE

Was installment income received by petitioner, John W. Newell, in the year 1971, which was derived from a covenant not to compete in connection with the sale of his business, subject to unincorporated business taxes.

FINDINGS OF FACT

1. Petitioner, John W. Newell, filed an unincorporated business tax return for 1971. The Income Tax Bureau held that he failed to report interest income and installment sale gain from the sale of his business in said year. He also failed to report income derived from a covenant not to compete with the purchaser of the business. A Notice of Deficiency dated September 30, 1974, was issued in the amount of \$431.26 unincorporated business tax due, plus \$63.59 interest, for a total sum of \$494.85.

2. Petitioner, John W. Newell, agreed that interest income and installment sale gain were subject to unincorporated business tax. He only took issue with the imposition of unincorporated business tax upon the income received which resulted from the covenant not to compete.

3. Petitioner, John W. Newell, operated an insurance agency as a sole proprietorship. On August 11, 1971, he entered into

a written agreement to sell the business. One provision of the agreement covered the sale of insurance contracts, renewals, files, goodwill and related assets for \$20,000.00 plus interest payable in installments. Another provision was a covenant not to compete for which petitioner, John W. Newell, would receive \$18,290.00, also payable in installments. Petitioner, John W. Newell, stated that the buyer would not have entered into the agreement unless the covenant was included.

4. The agreement called for payments to the seller of \$4,000.00 for the first three months and then \$2,000.00 every three months thereafter until a total of \$40,000.00 was paid for the entire transaction which included the covenant.

CONCLUSIONS OF LAW

A. That the covenant not to engage in an occupation or undertaking that would be in conflict with the business interests of the buyer constituted the surrender of an intangible asset, property right or right of value directly connected with the sale of the business.

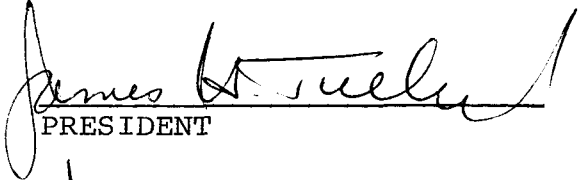
B. The income derived from the covenant not to compete by petitioner, John W. Newell, in the year 1971 was subject to

unincorporated business tax in accordance with the meaning and intent of section 705 of the Tax Law.

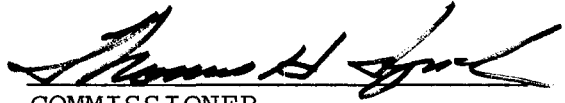
C. That the petition of John W. Newell is denied and the Notice of Deficiency dated September 30, 1974 is sustained.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER