

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WAD RENT-A-TRUCK CO.

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)~~ Fiscal :  
Year Ending January 31, 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 14th day of January , 1977 , ~~she~~ served the within  
Notice of Decision by (certified) mail upon Wad Rent-A-Truck Co.

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:  
Wad Rent-A-Truck Co.  
c/o Alan Weinberg  
11 Whitestone Lane  
Rochester, New York 14618  
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 , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WAD RENT-A-TRUCK CO.

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) XXXX Period(s) XXXX~~ Fiscal :  
Year Ending January 31, 1968.

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 Lester E. Stone

(representative of) the petitioner in the within proceeding,

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

Lester E. Stone, CPA  
1705 Liberty Bank Building  
Buffalo, New York 14202

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 , 1977.

Bruce Batchelor

Just Bach



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**

Wad Rent-A-Truck Co.  
c/o Alan Weinberg  
11 Whitestone Lane  
Rochester, New York 14618

Gentlemen:

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

Please take further notice that pursuant to  
Section(§) **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	:	
WAD RENT-A-TRUCK CO.	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Fiscal Year Ending January 31,	:	
1968.	:	

---

Petitioner, Wad Rent-A-Truck Co., c/o Alan Weinberg, 11 Whitestone Lane, Rochester, New York 14618, filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the fiscal year ending January 31, 1968. (File No. P-4620). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on September 16, 1976, at 2:45 P.M. Petitioner appeared by Lester E. Stone, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

ISSUE

Was the gain derived from the installment sale of business assets of a liquidating partnership and subsequently distributed

to the partners, subject to an unincorporated business tax applied to the partnership?

FINDINGS OF FACT

1. Petitioner, Wad Rent-A-Truck Co., did not file an unincorporated business tax return for the fiscal year ending January 31, 1968.

2. On June 24, 1974, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against Alan Weinberg, Jack J. Feinglass, et al., individually and as co-partners, d/b/u the firm name and style of Wad Rent-A-Truck Co., dissolved, for fiscal year ending January 31, 1968. In the Statement of Audit Changes, the Income Tax Bureau asserted that in accordance with the decision of the State Tax Commission dated May 16, 1972 which held that the gain on the installment sale for the fiscal year ending January 31, 1967, was subject to unincorporated business tax; the gain on the installment sale for the fiscal year ending January 31, 1965 was also subject to unincorporated business tax.

3. Petitioner, Wad Rent-A-Truck Co., was a partnership using the accrual basis as their method of accounting. It filed an IT-204, New York State partnership return for fiscal year ending January 31, 1967. On this return they indicated that this was a final return; that the business dissolved August 31, 1965,

and that the liquidation of the partnership was completed during the fiscal year ending January 31, 1967. On a schedule attached to this return the partnership reported a gain from sale of partnership assets. The schedule also stated that the gain was to be reported on the installment method.

4. On January 10, 1966, Wad Rent-A-Truck Co. sold business assets for \$80,000.00 of which \$73,837.75 represented a gain in accordance with section 1245 of the Internal Revenue Code. In return for these assets the petitioner received \$80,000.00 of promissory notes. The notes were payable including interest at 6% on the 20th day of each month for 24 consecutive months commencing on the 20th day of February, 1966. The installment payments were deposited in an agency account and disbursed by the agent to each former partner. These twenty-four monthly installments were in the amount of \$3,545.68 each and included interest at the rate of 6%. The gain on the installment obligations was \$38,023.90 for the fiscal year ending January 31, 1968.

5. Petitioner, Wad Rent-A-Truck Co., filed an IT-204, New York State partnership return for the fiscal year ending January 31, 1971. The return indicated that the business was in liquidation.

6. The petitioner, Wad Rent-A-Truck Co., contended that it dissolved prior to February 1, 1967, and that the notes received in payment of business assets were distributed in liquidation of each partner's interest. Petitioner also contends that the partnership realized no gain on the sale of the business assets by reason of section 453(a) of the Internal Revenue Code of 1954 and that the notes distributed to the partners for each partner's share was not sufficient to subject these partners to unincorporated business tax.

CONCLUSIONS OF LAW

A. That the business being liquidated by petitioner, Wad Rent-A-Truck Co., was an unincorporated business as such term is defined in section 703(a) of the Tax Law.

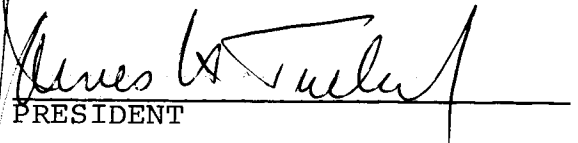
B. That the installment payments received by the former partners of Wad Rent-A-Truck Co. during the fiscal year ending January 31, 1968 constituted unincorporated business gross income of the partnership within the meaning and intent of section 705(a) of the Tax Law.

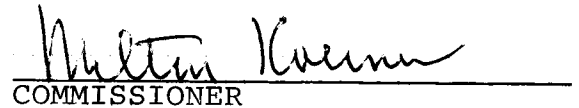
C. That the petition of Wad Rent-A-Truck Co. is granted to the extent that the gain on the installment sale of business assets for the fiscal year ending January 31, 1968 is reduced from \$41,090.11 to \$38,023.90 and the interest income that was estimated at \$4,418.83 is reduced to \$1,351.89, and that the Income Tax Bureau is hereby directed to accordingly modify the

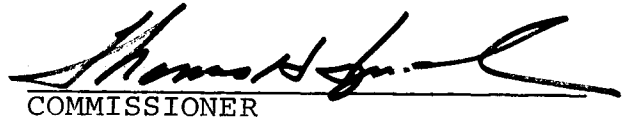
Notice of Deficiency issued June 24, 1974, together with such interest as may be lawfully owing; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
January 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER