

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLARENCE WOLF

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Tax on net incomes of
Unincorporated Business
Taxes under Article ~~(XXX 16-A)~~ of the
Tax Law for the Year ~~(XXX or Period(s))~~
1958

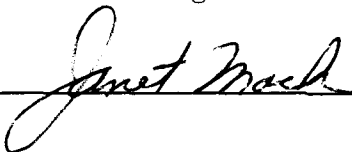
State of New York
County of Albany

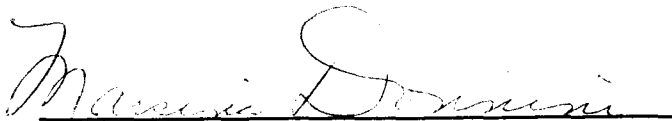
Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of August, 19 77, she served the within
Notice of Determination by ~~XXXXXX~~ mail upon Clarence Wolf
~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Clarence Wolf
420 Benzing Road
Orchard Park, New York
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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

26th day of August, 19 77





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CLARENCE WOLF

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Tax on net incomes of :
Unincorporated Business :
Taxes under Article 16-A of the :
Tax Law for the Year (XXXX Period(s)) :
1958

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 26th day of August, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Graham Wood Smith
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Graham Wood Smith
1407 Genesee 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

26th day of August, 1977

Marsina Donnini

Janet Mack



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

August 26, 1977

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

Mr. Clarence Wolf
420 Benzing Road
Orchard Park, New York

Dear Mr. Wolf:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(a)~~ **386-J** 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 **90 days** 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 TAX COMMISSION

In the Matter of the Application :
of :
CLARENCE WOLF :
for Revision of a Determination or for :
Refund of Unincorporated Business Tax :
under Article 16-A of the Tax Law for :
the Year 1958. :

A hearing was held in connection therewith at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York.

Whether the assessment of additional unincorporated business tax for 1958 made on November 1, 1963, more than 3 years but less than 6 years from the date the return was made, was timely issued in accordance with the provisions of section 373(1) as incorporated in section 386-j of the Tax Law.

FINDINGS OF FACT

1. The applicant filed an unincorporated business tax return for the year 1958 on which the amount shown to be due was paid.

2. Annexed to said return in Schedule "D", the applicant reported as a "Long Term Contract Sale" the transfer of 31 acres of land for a gross profit of \$43,971.38, of which he claimed that only one-third or \$12,000.00 was received in 1958.

3. Upon audit by the Internal Revenue Service, the Federal tax was adjusted and assessed as a gain on the sale of a capital asset. The final Federal change was effective February 2, 1961, and was reported to the New York State Department of Taxation and Finance on IT Form 115 ("Notice of Federal Change") on April 10, 1961, within 90 days as required by section 367, subdivision 2 of the Tax Law.

4. On November 1, 1963, the Income Tax Bureau issued Assessment AB 052500 for the year 1958 against the applicant. The assessment was made more than one year after the notice of change was filed, and more than three years but less than six years after the filing of the original return, on the ground that there was omitted from gross income an amount in excess of 25% thereof.

CONCLUSIONS OF LAW

A. That the reporting of the profit from the sale of the real property as a long term capital gain in Schedule "D" annexed to the personal income tax and unincorporated business tax returns

was not an omission within the meaning of section 373, subdivision 1 of the Tax Law as incorporated in section 386-j of the Tax Law.

B. That the time of six years in which to issue assessments under section 373, subdivision 1 of the Tax Law was not applicable since full disclosure was made by the applicant. (See Colony v. Commr. of Internal Revenue, 357 U.S. 28; Warnecke v. State Tax Commission, 15 AD 2d 320, 323, 223 NYS 2d 776, 779.

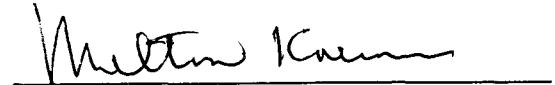
C. That Assessment AB 052500 for the year 1958 was not issued within the time provided in section 386-j of the Tax Law and is hereby cancelled in full.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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of Unincorporated Business :
Taxes under Article ~~(s)~~ 16-A of the :
Tax Law for the Year ~~(s)~~ ~~XXXXXX~~ 1958 :
1958

State of New York
County of Albany

John Huhn , 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 6th day of September , 19 77, he served the within
Notice of Determination by (certified) mail upon Graham Wood Smith, Esq.

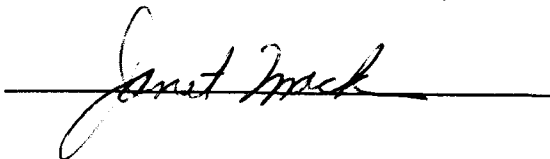
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Graham Wood Smith, Esq.
Main Place Tower
Buffalo, New York 14202

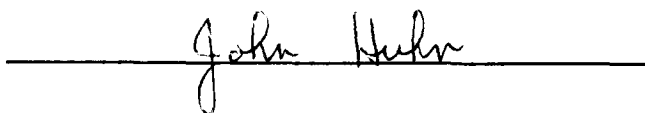
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of September , 1977.





STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Mr. Graham Wood Smith
1407 Genesee Building
Buffalo, New York 14202

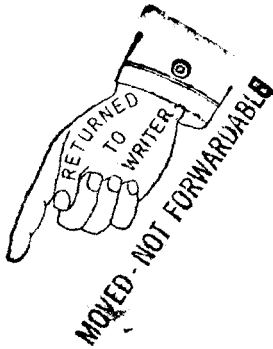
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Mr. Graham Wood Smith
Merrill Place Tower
Buffalo, NY
14202
Very truly

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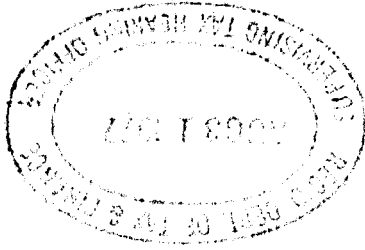
STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Mr. Clarence Wolf
420 Benzing Road
Orchard Park, New York





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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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Tax Law for the Year ~~(a) or Period (a)~~ :
1958

State of New York
County of Albany

John Huhn, 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 12th day of September, 1977, he served the within
Notice of Determination by ~~(certified)~~ mail upon Clarence Wolf
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Clarence Wolf
420 Benzing Road
Orchard Park, New York
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)~~
~~(a) or Period (a)~~ 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

12th day of September, 1977.

