

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ellis E. Knickerbocker :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Unincorporated Business Tax :

under Article 23 of the Tax Law

for the Years 1970 & 1971. :

State of New York

County of Albany

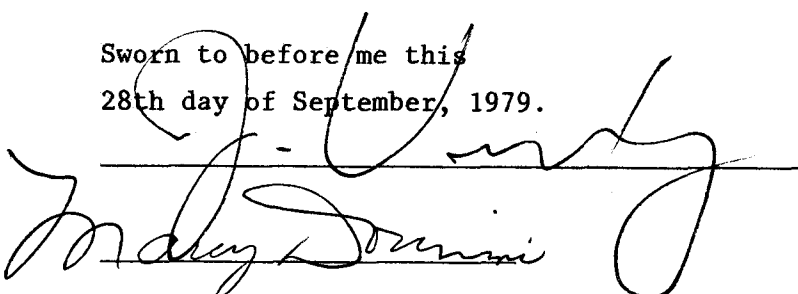
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Ellis E. Knickerbocker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ellis E. Knickerbocker
117 Aulin Ave.
Oviedo, FL 32765

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.



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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Ellis E. Knickerbocker
117 Aulin Ave.
Oviedo, FL 32765

Dear Mr. Knickerbocker:

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(s) 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,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ELLIS E. KNICKERBOCKER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1970 and 1971.	:	

Petitioner, Ellis E. Knickerbocker, 117 Aulin Avenue, Oviedo, Florida 32765, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970 and 1971 (File No. 13263).

On October 4, 1978, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether the income which petitioner derived from gains attributable to the installment sale of real property, and the interest therefrom, constituted income subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Ellis E. Knickerbocker, filed an unincorporated business tax return for 1970. He did not include the gain which was derived from the installment sale of land and buildings which he used in his business. Petitioner also failed to include interest income which was earned on the installment sale. Petitioner did not file an unincorporated business tax return for 1971.

2. The Income Tax Bureau held that the installment gain from the sale of

the property and also the interest income which was derived therefrom were business-connected and, therefore, subject to unincorporated business tax. On February 24, 1975, a Notice of Deficiency was issued for 1970 and 1971 in the amount of \$1,076.39 in unincorporated business tax, plus \$214.00 in interest, for a total sum of \$1,290.39.

3. Petitioner operated two unincorporated businesses. One was a laundromat and the other was a roller skating rink, and they were located in two separate buildings adjacent to each other in Vestal, New York. Both the land and buildings were owned by petitioner, Ellis E. Knickerbocker, and his wife, Dorothy Knickerbocker, as tenants by the entirety. While petitioner operated the roller skating rink and the laundromat, he maintained separate books and records.

4. On July 1, 1969, petitioner executed a lease with Goldwin-Kent, Inc. (Kent Drug Stores). Pursuant to the agreement, petitioner agreed to lease the building which housed the roller skating rink to Kent Drug Stores for a term of ten years. The lease also contained an option to purchase the premises.

5. Petitioner continued to own and operate the laundromat in the adjacent building. In November of 1969, Kent Drug Stores made an offer to purchase both the leased roller rink property and the laundromat property. After extensive negotiations, the transaction was completed. Both properties were sold to Kent Drug Stores on September 28, 1970.

6. The laundromat ceased doing business on September 3, 1970. Until that date, petitioner kept separate records for the laundromat and for the leased roller skating rink property.

7. Petitioner contended that at the time of the sale in 1970, the property was no longer a business asset because in 1969, it was converted to rental property.

CONCLUSIONS OF LAW

A. That section 703(a) of the Tax Law defines an unincorporated business as "...any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity...". Petitioner regularly carried on an unincorporated business as a laundromat operator until September of 1970, when the real property was sold as an integral part of the option to buy the adjacent leased premises.

B. That section 705(a) of the Tax Law defines unincorporated business gross income as follows:

...the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in business, or from liquidation of the business, or from collection of installment obligations of the business...

The installment gain which was realized from the sale of the roller skating rink property, in connection with the lease-option transaction, is includible in computing unincorporated business gross income for 1970 and 1971, within the meaning and intent of section 705(a) of the Tax Law.

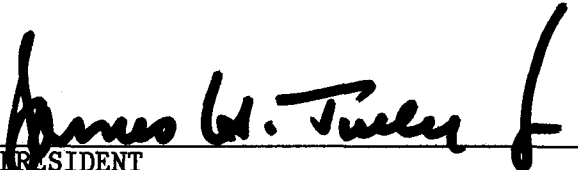
C. That the income which was derived from the sale of the leased, roller skating rink property in 1970 and 1971 constituted income from the use of an asset connected with petitioner's business. It was not income received solely by reason of holding, leasing or managing real property, within the meaning and intent of section 703(e) of the Tax Law.

D. That the petition of Ellis E. Knickerbocker is denied and the February 24,


1975 Notice of Deficiency is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York
SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER