

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bachman Wholesale Co. :

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 1973, 1974, 1975. :

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 November, 1980, he served the within notice of Decision by certified mail upon Bachman Wholesale Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bachman Wholesale Co.
1025 Chili Ave.
Rochester, NY 14611

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 November, 1980.

Isobora A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bachman Wholesale Co. :
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 1973, 1974, 1975. :

AFFIDAVIT OF MAILING

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 November, 1980, he served the within notice of Decision by certified mail upon Sydney R. Rubin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Sydney R. Rubin
2 State St.
Rochester, NY 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
28th day of November, 1980.

Deborah A. Bank

J. Vredenburg

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

November 28, 1980

Bachman Wholesale Co.
1025 Chili Ave.
Rochester, NY 14611

Gentlemen:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sydney R. Rubin
2 State St.
Rochester, NY 14614
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BACHMAN WHOLESALE COMPANY : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1973, 1974 and 1975. :
:

Petitioner, Bachman Wholesale Company, 1025 Chili Avenue, Rochester, New York 14611, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1973, 1974 and 1975 (File No. 19475).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on October 24, 1978 at 10:45 A.M. Petitioner appeared by Sydney R. Rubin, Esq. The Audit Division appeared by Peter Crotty, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether Bachman Wholesale Company maintained a regular place of business outside New York State.

FINDINGS OF FACT

1. On September 20, 1976, the Audit Division of the Department of Taxation and Finance issued a Statement of Audit Changes against Bachman Wholesale Company for the years 1973, 1974 and 1975. Allocation of business income was disallowed on the grounds that the partnership did not maintain a regular place of business outside New York State. Accordingly, additional

taxable income was found to be due in the amount of \$10,299.68, plus penalty and interest, for a total sum of \$11,928.27. On March 28, 1977, a Notice of Deficiency was issued.

2. Bachman Wholesale Company (hereinafter "Bachman") was a partnership made up of brothers Stanley and Bernard Bachman. A Certificate to Conduct Business under Assumed Name was filed in Monroe County, New York, on July 10, 1946. Business was to be transacted in Rochester, New York. Bachman filed New York State partnership returns for the years 1973, 1974 and 1975 wherein it allocated to New York State 50 percent of its business income using a factor method. Petitioner contended that it maintained an office in Washington, D.C. and in Rochester, New York.

3. During the years at issue, Bachman was agent for Morris Diamond Associates, Inc., (hereinafter "M.D.A., Inc."), 2142 Cathedral Avenue, N.W., Washington, D.C. which purchased and sold material and assets acquired from Bachman. Petitioner, who dealt with governmental agencies, shared offices with said corporation. Bachman was paid a commission by the corporation for services rendered and was paid for all expenses, including telephone. The offices in Washington, D.C. occupied the fourth floor of two connected residential townhouses. The lower three floors were owned and occupied by Stanley J. Bachman as a residence. M.D.A., Inc. paid Bachman \$400.00 per month rental for the use of these offices. The Washington, D.C. office was located in a residential area. No signs were on the exterior of the building. Bachman's dealings with government agencies required personal contact and as a result there was no walk-in traffic as such by the public. The office had the usual equipment of a business office including telex machines, desk printing machines and copying equipment.

4. M.D.A., Inc. and Bachman also shared offices in Rochester, New York. Bachman paid nominal rent for the use of the Rochester office which was part

of an overall arrangement with M.D.A., Inc. Seven or eight persons were employed by M.D.A., Inc., none of whom were located in Rochester, New York. Bernard Bachman was located in Rochester where he had a one room office.

5. Bachman did not file unincorporated business tax returns with the District of Columbia for years 1973 and 1974. Petitioner did file a 1975 tax return as a result of a change in the unincorporated business franchise tax law in 1975. Said return indicated a Rochester address and, for 1976, it listed a Washington, D.C. address. Bachman was not listed in the Washington, D.C. business directory. In December of 1976, petitioner inquired as to whether it was registered to do business in the District of Columbia; the Tax Compliance and Registration Division of the District of Columbia indicated that they were not registered.

6. Stanley J. Bachman, a partner in Bachman, bought the premises at 2142 Cathedral Avenue, Washington, D.C. in 1968 and became a resident of Washington, D.C. in said year. He devoted his services to the partnership and was paid out of the commissions received by Bachman. The other partner of Bachman was Bernard Bachman who managed the office and warehouse in Rochester.

7. Bachman had for some fifteen years employed the services of Louis A. Rappoport, a certified public accountant licensed in New Jersey, who practiced in New York State. He also advised Stanley J. Bachman on tax matters.

CONCLUSIONS OF LAW

A. That petitioner, Bachman Wholesale Company, did maintain a place of business in Washington, D.C. where it regularly carried on its business activities; therefore, petitioner is entitled to allocate its income within the meaning and intent of section 707(a) of the Tax Law. (See Matter of the Petition of Kenneth Pearson and Marilyn Pearson, State Tax Commission, January 2, 1980.)

B. That the petition of Bachman Wholesale Company is granted and the Notice of Deficiency issued March 28, 1977 is cancelled.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

James W. Tuck
PRESIDENT

Thomas H. S.
COMMISSIONER

Francis R. Koenig
COMMISSIONER