

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Kenneth T. Grathwohl :

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 Year 1970. :

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 13th day of February, 1980, he served the within notice of Decision by certified mail upon Kenneth T. Grathwohl, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

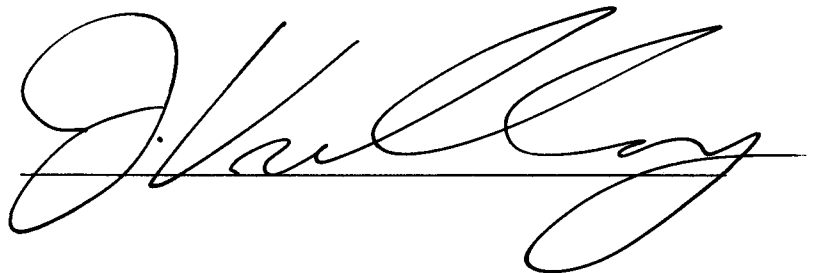
Kenneth T. Grathwohl  
508 Sterling Pl.  
Greenport, L.I., NY 11944

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  
13th day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

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Unincorporated Business Tax :  
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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 13th day of February, 1980, he served the within notice of Decision by certified mail upon William N. Segal the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

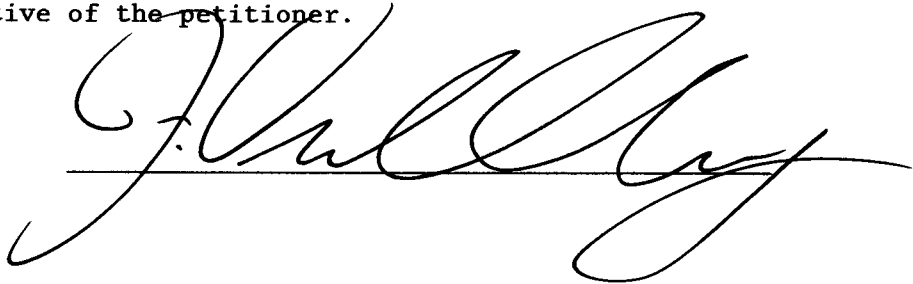
Mr. William N. Segal  
342 Madison Ave.  
New York, NY 10017

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  
13th day of February, 1980.

Joanne Knapp



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

February 13, 1980

Kenneth T. Grathwohl  
508 Sterling Pl.  
Greenport, L.I., NY 11944

Dear Mr. Grathwohl:

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  
William N. Segal  
342 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
KENNETH T. GRATHWOHL	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Year 1970.	:	

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Petitioner, Kenneth T. Grathwohl, 508 Sterling Place, Greenport, L.I., New York 11944, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970 (File No. 13578).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 6, 1979 at 1:15 P.M. Petitioner appeared by William N. Segal, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUES

I. Whether petitioner was entitled to an unincorporated business deduction for the reasonable value of services rendered by his spouse.

II. Whether penalties for failure to file an unincorporated business tax return were properly imposed against petitioner.

#### FINDINGS OF FACT

1. Petitioner, Kenneth T. Grathwohl, (deceased 4-23-78) and Janet Grathwohl, his wife, timely filed a joint New York State Income Tax Resident Return for 1970 in which he reported business income from his vending machine activities. An unincorporated business tax return was not filed for said year.

2. On May 20, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner on which the Bureau stated that the income from his activities from vending machines was subject to unincorporated business tax. In addition, penalties were imposed in accordance with sections 685(a)(1) and 685(a)(2) of the Tax Law.

3. Petitioner conceded that the income from his vending machine activities was subject to unincorporated business tax but argued that an additional deduction of \$7,800.00 should be allowed for the services rendered by his wife and that penalties should be cancelled due to reasonable cause.

4. Petitioner, Kenneth T. Grathwohl, operated the Suffolk Vending Company, a sole proprietorship, from his personal residence in Greenport, New York.

5. In the conduct of his business, petitioner employed his son and paid him a weekly salary, from which he withheld various payroll taxes. He utilized the services of Janet Grathwohl, his wife, who performed the bookkeeping, clerical and secretarial duties of the business. She was not paid any compensation for the time and services she rendered, nor was she listed as an employee on the payroll records. Petitioner estimated that his wife worked two days a week, and that her services during 1970 were valued at \$7,800.00.

6. Petitioner's representative contended that the unincorporated business tax return for 1970 was not filed due to his own illness. He explained that he was hospitalized and unable to supervise his staff in the preparation of his client's tax return. Petitioner's Federal and New York State personal income tax returns were timely filed for 1970 and signed by his representative. Unincorporated business tax returns were filed prior and subsequent to 1970.

#### CONCLUSIONS OF LAW

A. That Article 23 of the Tax Law does not provide for an unincorporated business tax deduction for the reasonable value of services rendered by a

spouse or any other individual unless wages are in fact, paid.

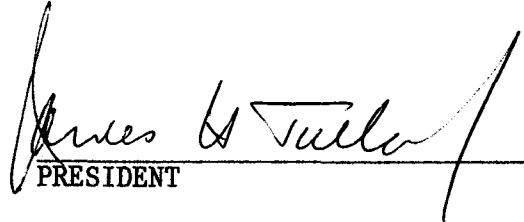
B. That petitioner's failure to file an unincorporated business tax return for 1970, due to his accountant's illness, was not due to reasonable cause; therefore, the penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law are sustained.

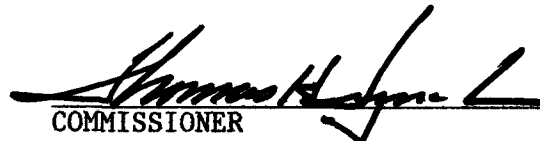
C. That the petition of Kenneth T. Grathwohl (deceased 4-23-78) is denied and the Notice of Deficiency issued May 20, 1974, is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

**FEB 13 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER