

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

William Kingham

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 1972 & 1973. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon William Kingham, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

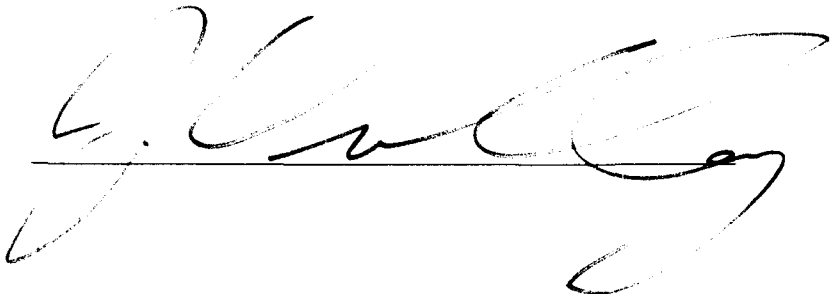
William Kingham
7607 State Rd.
Mt. Morris, NY 14510

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
16th day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

William Kingham

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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 1972 & 1973. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Howard Forsythe the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

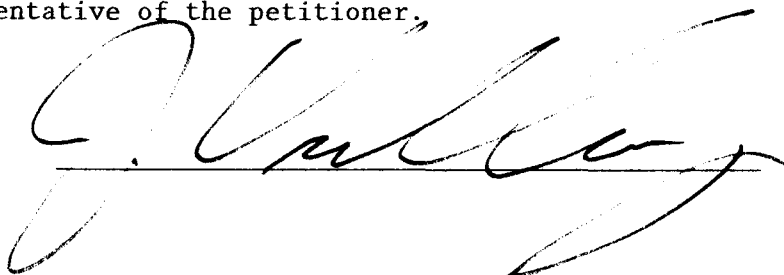
Mr. Howard Forsythe
267 Wadsworth Ave.
Avon, NY 14414

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
16th day of May, 1980.

Joanne Knapp



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

May 16, 1980

William Kingham
7607 State Rd.
Rt. 408
Mt. Morris, NY 14510

Dear Mr. Kingham:

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
Howard Forsythe
267 Wadsworth Ave.
Avon, NY 14414
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM KINGHAM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1972 and 1973.	:	

Petitioner, William Kingham, 7607 State Road, Route 408, Mt. Morris, New York 14510, 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 1972 and 1973 (File No. 24181).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 14, 1979 at 10:45 A.M. Petitioner, William Kingham, appeared with Howard Forsythe, PC. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly determined petitioner's unincorporated business tax liability for the years 1972 and 1973 as a result of a field audit.

FINDINGS OF FACT

1. Petitioner, William Kingham, timely filed a New York State Income Tax Resident Return (Form IT-201) with his wife for 1972. Petitioner did not file a New York State Unincorporated Business Tax Return for said year. For 1973, petitioner, William Kingham, timely filed a New York State Combined Income Tax Return (Form IT-208) and a New York State Unincorporated Business Tax Return (Form IT-202).

2. Petitioner was a restaurateur who did business under the name of "Avon Inn" at 55 East Main Street, Avon, New York.

3. On March 28, 1977, based on a field audit, the Audit Division issued notices of deficiency against petitioner, on which additional personal income and unincorporated business taxes were asserted for 1972 and 1973. These deficiencies were based on the Audit Division's examination of petitioner's books and records in accordance with established audit procedures and techniques. The Audit Division utilized the net worth method of reconstructing income, along with a check analysis and a cost of living analysis.

4. At a pre-hearing conference held on July 13, 1978, petitioner presented additional information which reduced the taxable income previously determined on the notices of deficiency for both personal income and unincorporated business taxes by \$5,562.20 and \$19,894.84 for 1972 and 1973, respectively. Based on the pre-hearing conference and proposed adjustments, petitioner withdrew his petition for redetermination of a deficiency for the personal income tax portion of the case. For the unincorporated business tax portion of the case, petitioner contended that the remaining unexplained additional income found during the audit came from nonbusiness sources, and therefore, was not subject to unincorporated business tax.

5. Petitioner further contended he worked seven days a week at his restaurant, and therefore, his living expenses were low and he was able to accumulate cash on hand.

6. Petitioner did not submit any additional documentary evidence regarding additional sources of income.

CONCLUSIONS OF LAW

A. That petitioner failed to sustain the burden of proof required, in accordance with the meaning and intent of section 689(e) of the Tax Law, to

show that he did, in fact, have other sources of funds available from nonbusiness sources, and therefore, such funds were not subject to unincorporated business tax.

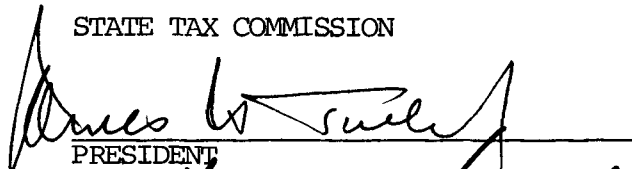
B. That petitioner did not sustain the burden of proof required, within the meaning and intent of section 689(e) of the Tax Law, to show that the audit method used by the Audit Division was inaccurate and/or incorrect for 1972 and 1973.

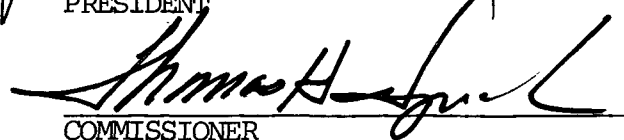
C. That the petition of William Kingham is granted to the extent of reducing the unreported income for unincorporated business tax purposes to the amount determined at the pre-hearing conference. For 1972, the unincorporated business taxable income is reduced from \$8,633.38 TO \$4,138.62, and for 1973 from \$29,619.69 to \$11,042.66. The Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued March 28, 1977; that the modified tax due shall be, together with such additional interest and penalties as may be lawfully owing. Except as so granted, the petition is in all other respects denied.

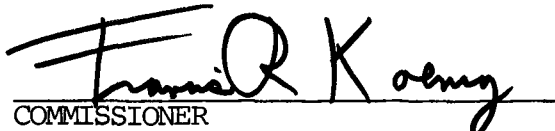
DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER