

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Southern Tier Basketball Coaches Clinic : AFFIDAVIT OF MAILING
Allan C. Cave, Robert F. Lane, Ind. & Co-Partners
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 1972. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Southern Tier Basketball Coaches Clinic, Allan C. Cave, Robert F. Lane, Ind. & Co-Partners, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Southern Tier Basketball Coaches Clinic
Allan C. Cave, Robert F. Lane, Ind. & Co-Partners
3 Eric Ct.
Johnson City, NY 13790

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
7th day of July, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Southern Tier Basketball Coaches Clinic :

AFFIDAVIT OF MAILING

Allan C. Cave, Robert F. Lane, Ind. & Co-Partners

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 1972.

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Herbert M. Matties 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. Herbert M. Matties
Chernin & Gold
P.O. Box 1563
Binghamton, NY 13902

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

7th day of July, 1980.

Dorothy A. Burk

J. Vredenburg

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

July 7, 1980

Southern Tier Basketball Coaches Clinic
Allan C. Cave, Robert F. Lane, Ind. & Co-Partners
3 Eric Ct.
Johnson City, NY 13790

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
Herbert M. Matties
Chernin & Gold
P.O. Box 1563
Binghamton, NY 13902
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SOUTHERN TIER BASKETBALL COACHES CLINIC	:	DECISION
ROBERT F. LANE and ALLAN C. CAVE	:	
Individually and as Co-Partners	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1972	:	

Petitioner Southern Tier Basketball Coaches Clinic, 3 Eric Court, Johnson City, New York 13790 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 1972 (File No. 20584).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on December 6, 1979 at 9:15 A.M. Petitioner appeared by Herbert M. Matties. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether the income from the sale of a business and the covenant not to compete is reportable in the year of sale or in the years when payment is received.

FINDINGS OF FACT

1. Petitioner Southern Tier Basketball Coaches Clinic filed a New York State partnership return for 1972 on August 11, 1976 on which was reported net business income of \$524.78.

2. On October 31, 1977 the Audit Division issued a Notice of Deficiency against petitioner, imposing unincorporated business tax due of \$857.90, plus penalty of \$214.48 (pursuant to section 685(a) of the Tax Law) and interest of \$292.44, for a total of \$1,364.82. The notice was issued on the grounds that the partnership return did not report the following items; sale of a business and covenant not to compete of \$24,000.00, codirector salary of \$1,000.00 and advertising and clinic exhibitor commission of \$223.00. The latter two unreported items are not contested by petitioner and, therefore, not at issue. The Audit Division further contended that the sale of the business did not qualify as an installment sale and therefore, totally reportable in the year of sale.

3. Robert F. Lane and Allan C. Cave were equal partners in partnership of Southern Tier Basketball Coaches Clinic. The partners entered into an agreement on May 1, 1972 with Scholastic Magazines, Inc. selling their entire interest in Southern Tier Basketball Coaches Clinic (hereinafter "Clinic") and a covenant not to compete until October 1, 1980 without first obtaining written consent. The purchase price for the clinic and all its assets was \$12,000.00 and the covenant not to compete was an additional \$12,000.00. They were paid \$8,000.00 at the closing on May 1, 1972; the remaining amount was paid in installments of \$8,000.00 on July 1, 1973, \$4,000.00 on October 15, 1974 and \$4,000.00 October 15, 1975.

4. Robert F. Lane and Allen C. Cave each reported \$12,000.00 on their personal Federal and New York State income tax returns. The partners argued that they filed their income tax returns incorrectly in that they should have reported only \$4,000.00 each (amount received in 1972) and not the \$12,000.00, but could not correct the returns because the statute of limitations had passed.

5. At the closing the partners did not receive a negotiable instrument equivalent to cash for the balance payable under both provisions of the agreement.

6. The petitioner contended that the correct recomputation of unincorporated business tax is as follows:

Business income previously reported	\$ 524.78	
Sale of business	4,000.00	
Covenant not to compete	4,000.00	
Coordinator's salary	1,000.00	
Advertising and clinic exhibitor commission	223.00	
Total		\$9,747.78
Allowance for partner's services	\$1,949.56	
Exemption	5,000.00	
Total		<u>6,949.56</u>
Taxable Business income		<u>\$2,798.22</u>
Unincorporated Business Tax at 5 1/2%		\$ 153.90
Business Tax Credit		46.10
Unincorporated Business Tax Due		<u>\$ 107.80</u>

7. Petitioner did not act with reasonable cause in not filing a New York State partnership return on time.

CONCLUSIONS OF LAW

A. That the sale of the business and the covenant not to compete does not qualify as an installment sale in accordance with section 453 of the Internal Revenue Code. However, the only amount taxable is the actual amount received in negotiable instruments in 1972 in accordance with section 451(a) of the Internal Revenue Code and because the partners did not constructively receive the unpaid balance because the agreement was neither evidence of indebtedness payable on demand or readily tradable since the compensation to be received depended upon future events or conditions.

B. That the petitioners failure to file a New York State partnership return in accordance with section 658(c) of the Tax Law and report the unincorporated

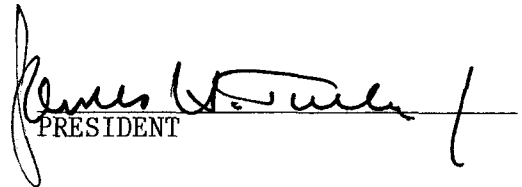
business tax due for 1972 was not due to reasonable cause; therefore, the penalty imposed pursuant to section 685(a) of the Tax Law is sustained.

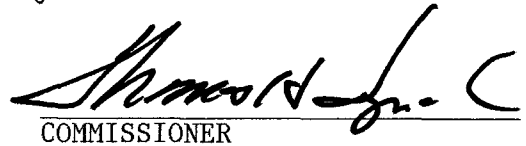
C. That the Audit Division is hereby directed to accordingly modify the Notice of Deficiency issued October 31, 1977 to the extent indicated in Finding of Fact "6"; that except as so granted the petition of Southern Tier Basketball Coaches Clinic is in all other respects denied and the Notice of Deficiency issued October 31, 1977 is sustained, together with such additional interest and penalty as may be lawfully owing.

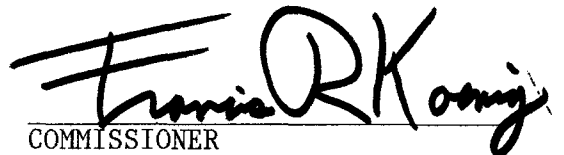
DATED: Albany, New York

JUL 07 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER