

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Commodity Traders International :
: 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 1974.

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Commodity Traders International, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Commodity Traders International
c/o Murray Iskoe
400 E. 56th St.
New York, NY 10022

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
6th day of November, 1981.

Gunnar A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Commodity Traders International :
: 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 1974 :
:

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Milton Miller the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton Miller
Miller & Company, CPA's
575 Lexington Ave., Suite 1660
New York, NY 10022

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
6th day of November, 1981.

Annie A. Hagelund

J. Vredenburg

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

November 6, 1981

Commodity Traders International
c/o Murray Iskoe
400 E. 56th St.
New York, NY 10022

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
Milton Miller
Miller & Company, CPA's
575 Lexington Ave., Suite 1660
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
COMMODITY TRADERS INTERNATIONAL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1974.	:	

Petitioner, Commodity Traders International, c/o Murray Iskoe, 400 East 56th Street, New York, New York 10022, 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 1974 (File No. 20826).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1981. Petitioner appeared by Milton Miller, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq., (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the partnership Commodity Traders International has a "regular place of business" outside of this State within the meaning of section 707(a) of the Tax Law.

FINDINGS OF FACT

1. A Notice of Deficiency was issued on September 26, 1977 for unincorporated business tax under Article 23 of the Tax Law for the year 1974, against Commodity Traders International of 333 East 46th Street, New York, New York. This was in the amount of \$3,886.63, plus interest of \$809.16, for a total of \$4,695.79.

2. Commodity Traders International was organized on or before May 24, 1974 to trade in petroleum related commodities of which there were severe shortages in 1974. The purchasing was done by Burton S. Sann and one other person both of whom resided in New York. The sales were handled by David C. Poole, who resided in South Carolina. None of them devoted much time to the business, but it was very profitable.

3. Commodity Traders International maintained its principle place of business at 333 East 46th Street, New York City.

4. a. The 1974 New York State Partnership return (IT-204) filed on April 9, 1975 listed the only place of business outside of New York as 35 Serrine Drive, Greenville, South Carolina. This was the residence of Mr. Poole and his wife. Petitioner now asserts that the listing of that residence as an office was a "mechanical" mistake. A South Carolina income tax partnership return submitted in evidence does not list any non-New York address for the firm.

b. Petitioner now claims that Commodity Traders International maintained a place of business at an office at 700 East North Street, Greenville, South Carolina. This office was leased by the landlord to Poole Company, Incorporated of which David C. Poole, a partner in Commodity Traders International, was the principle owner and only employee. The rent was \$90.00 a month. No charge was made to Commodity Traders International for any share of the rent. The office was a single room in a two-story office building.

c. A listing appeared in the 1975 Greenville Telephone Directory for Commodity Traders International of 700 East North Street, 271-9935. This listing was made with the telephone company (Southern Bell) "sometime after April 1974 and before April 1975". It was so listed by Poole Company.

d. Stationery, invoices and purchase orders have been submitted which show an address for Commodity Traders International at 700 East North Street, Greenville, South Carolina. These are blank and undated, however, and there is no indication that such documents existed in 1974.

CONCLUSIONS OF LAW

A. That the partnership, Commodity Traders International, did not maintain a regular place of business outside of New York; therefore, it cannot allocate its income to sources outside of the State. Petitioners have completely failed to show that during 1974 the partnership maintained a place of business outside the State within the meaning of section 707(a) of the Tax Law. The office in Greenville was the office of another business (Giordano v. State Tax Commission, 52 A.D.2d 691). Petitioner's claim that such office was its own office appears to be merely an afterthought which was first conceived in connection with the preparation of tax returns in 1975.

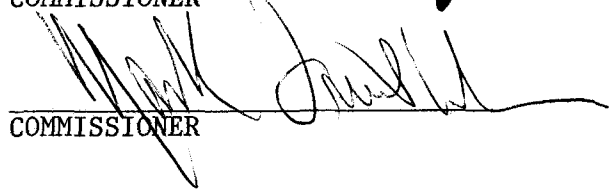
B. That the petition is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER