

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Michael J. Gerrity :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Income Tax :
under Article 23 of the Tax Law
for the Year 1973. :

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 27th day of February, 1981, he served the within notice of Decision by certified mail upon Michael J. Gerrity, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael J. Gerrity
843 Abbott Rd.
Buffalo, NY 14220

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
27th day of February, 1981.

Connie P. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Michael J. Gerrity :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Income Tax :
under Article 23 of the Tax Law
for the Year 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 27th day of February, 1981, he served the within notice of Decision by certified mail upon Carl P. Paladino 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. Carl P. Paladino
10 Ellicott Square Ct., Ellicott Square Bldg
Buffalo, NY 14203

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
27th day of February, 1981.

Emmie P. Hagelund

J. Vredenburg

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

February 27, 1981

Michael J. Gerrity
843 Abbott Rd.
Buffalo, NY 14220

Dear Mr. Gerrity:

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
Carl P. Paladino
10 Ellicott Square Ct., Ellicott Square Bldg
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAEL J. GERRITY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1973.	:	

Petitioner, Michael J. Gerrity, 843 Abbott Road, Buffalo, New York 14220, 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 1973 (File No. 19103).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on July 8, 1980 at 9:15 A.M. Petitioner, Michael J. Gerrity, appeared with Carl P. Paladino, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner's activities as an ambulance driver and crew chief constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Michael J. Gerrity, filed a New York State Income Tax Resident Return for 1973, on which he reported his occupation as ambulance driver. He did not file an unincorporated business tax return.

2. On April 11, 1977, the Audit Division issued a Notice of Deficiency for 1973 against petitioner imposing unincorporated business tax of \$447.48, plus penalties, pursuant to sections 685(a)(1) and (2) of the Tax Law, of

\$181.23 and interest of \$100.31, for a total due of \$729.02. The Notice was issued on the grounds that income from ambulance service business is subject to the unincorporated business tax.

3. Petitioner was crew chief and ambulance driver for Lasalle Ambulance Service, Inc. during the year at issue. Lasalle Ambulance Service, Inc. had a contract with Mercy Hospital to provide ambulances and a crew to man them. Prior to the year at issue, all payrolls and the scheduling of men were handled by Lasalle Ambulance Service, Inc. During the latter part of 1972, Lasalle Ambulance Service, Inc. assigned the responsibilities of scheduling a crew and preparing a payroll to the crew chiefs. Each week Lasalle Ambulance Service, Inc. would give its crew chiefs enough money to cover the payroll, payroll taxes and other payroll costs. In this instant case, the petitioner was given enough money to pay straight time at the Federal minimum wage so as to have the ambulance manned by two people twenty-four hours a day. If the crew chief scheduled a man over forty hours a week he would have to pay him time and a half and deduct the extra cost out of his own pay. Lasalle Ambulance Service, Inc. no longer under the time and a half rule, would allow the petitioner to work as many man hours as he chose to work at straight time and thereby enabling petitioner to keep a larger portion of the payroll. Subsequently, Lasalle Ambulance Service, Inc. reverted to the prior method of handling payrolls with the encouragement of another government agency.

4. Petitioner did not have any authority to hire or fire crew members working for Lasalle Ambulance Service, Inc. Lasalle Ambulance Service, Inc. provided the ambulance, equipment, gas and other supplies. If Mercy Hospital was dissatisfied with the ambulance service they would contact Lasalle Ambulance Service, Inc. and not the petitioner.

CONCLUSIONS OF LAW

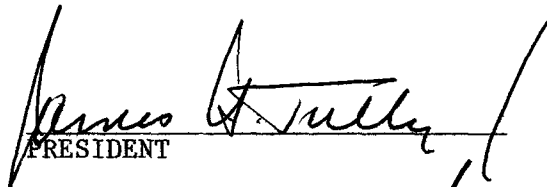
A. That the petitioner reported income from which he deducted salaries, payroll taxes and other payroll costs; does not automatically designate him as an operator of a business subject to unincorporated business tax. That the activities of petitioner Michael J. Gerrity during the year at issue were performed as an employee rather than independent agent; therefore, petitioner was not engaged in carrying on of an unincorporated business during 1973 in accordance with section 703 of the Tax Law.

B. That the petition of Michael J. Gerrity is granted and the Notice of Deficiency issued April 11, 1977 is cancelled.

DATED: Albany, New York

FEB 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER