

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Newborn Truck & Equipment Co. :  
: 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 1968 - 1969. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Newborn Truck & Equipment Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Newborn Truck & Equipment Co.  
Smithville Flats, NY

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  
14th day of August, 1981.

*Janice A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Newborn Truck & Equipment Co. :  
: 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 1968 - 1969. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Frank J. Filetto the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

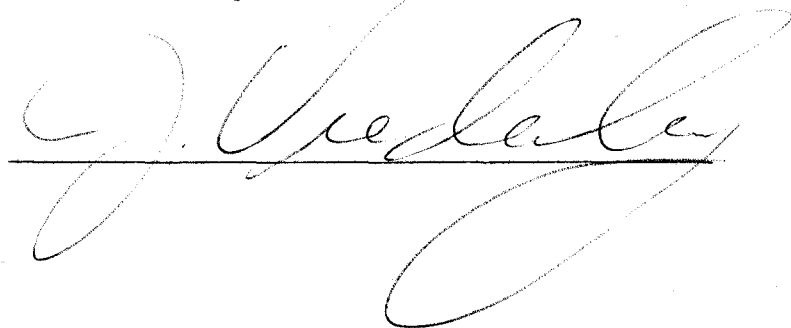
Frank J. Filetto  
East River Rd.  
Greene, NY 13778

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  
14th day of August, 1981.

  
James A. Haglund

  
Jay Vredenburg

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

August 14, 1981

Newborn Truck & Equipment Co.  
Smithville Flats, NY

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  
Frank J. Filetto  
East River Rd.  
Greene, NY 13778  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
NEWBORN TRUCK & EQUIPMENT CO.	:	DECISION
AND	:	
John P. Grant and E. Lance Doxie	:	
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 1969.	:	

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Petitioner, Newborn Truck & Equipment Co., Smithville Flats, New York 13841, 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 1969 (File No. 16313).

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 September 14, 1979 at 9:15 A.M. Petitioner appeared by E. Lance Doxie, Partner, and Frank J. Filetto, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether a Consent Fixing Period of Limitation upon Assessment of Unincorporated Business Tax obtained from an ex-partner of a dissolved partnership is binding upon the other former partner.

FINDINGS OF FACT

1. Newborn Truck & Equipment Company timely filed a New York State partnership return for 1969.

2. In early 1970, the partnership of Newborn Truck & Equipment Company wound up its affairs and dissolved. On April 1, 1970, a Certificate of Discontinuance of a partnership was filed by the partners, John P. Grant and E. Lance Doxie, in the Chenango County Clerk's Office. On that same day, John P. Grant filed a Certificate of Conducting Business under an assumed name. It certified that John P. Grant was now conducting or transacting business under the name or designation of Newborn Truck & Equipment Company and was the successor in interest to the partnership of John P. Grant and E. Lance Doxie.

3. On January 18, 1972, John P. Grant signed a Consent Fixing Period of Limitation Upon Assessment of Unincorporated Business Tax (Form IT-75) for the partnership of Newborn Truck & Equipment Company, for the taxable year 1968, extending the time an assessment could be issued to April 15, 1973.

4. On March 19, 1973, John P. Grant signed another Consent Fixing Period of Limitation upon Assessment of Unincorporated Business Tax for the partnership for the taxable years 1968 and 1969, extending the period assessments could be issued to April 15, 1974. During the time when the consents were being requested by the Income Tax Bureau, E. Lance Doxie was not aware of the pending audit or that his former partner John P. Grant had signed the consents. The whereabouts of John P. Grant has not been known since May 14, 1973.

5. On September 24, 1973, based on a field audit, the Income Tax Bureau issued a Notice of Deficiency against the partnership Newborn Truck & Equipment Company, for 1968 and 1969, asserting unincorporated business tax of \$17,846.94, plus interest of \$3,969.86, for a total of \$21,816.80.

6. The Income Tax Bureau examined the books and records of Newborn Truck & Equipment Company in accordance with established audit procedures and techniques. It utilized the source and application of funds method of reconstructing

income. The Bureau determined that there were discrepancies of \$34,696.25 and \$58,458.59 for 1968 and 1969, respectively.

7. On June 16, 1976, a conference was held between the Audit Division and E. Lance Doxie. Based on this conference, the Audit Division issued a letter dated July 27, 1976 whereby the division cancelled the deficiency for 1968, and reduced the unincorporated business tax deficiency for 1969 to \$2,057.43.

8. Mr. Doxie argued that at the time the Income Tax Bureau obtained the consent from Mr. Grant, the partnership was dissolved, that a certificate of dissolution was filed, and that the affairs of the partnership had been completely wound up for almost three years.

9. Mr. Doxie further contended that there was no pre-existing, continuing tax liability at the time Mr. Grant consented to extend the time in which the Income Tax Bureau could assess additional tax.

#### CONCLUSIONS OF LAW

A. That Partnership Law, 66(1)(a) provides that "(1) After dissolution a partner can bind the partnership except as provided in subdivision three(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution."

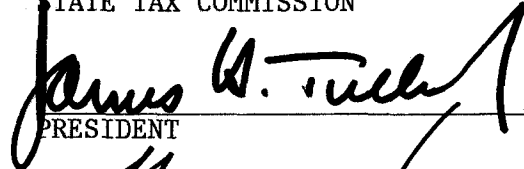
B. That the signing of a consent fixing period of limitation (Finding of Fact "4" supra) constituted an act appropriate for the winding up of partnership affairs. Therefore, the statutory period of limitation upon assessment for 1969 did not expire and the extension of said period is binding on the partnership pursuant to section 722(a) and 683(c)(2) of the Tax Law.

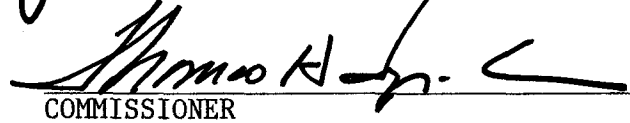
C. That the petition of Newborn Truck & Equipment Company is denied and the Notice of Deficiency issued on September 24, 1973 is sustained.

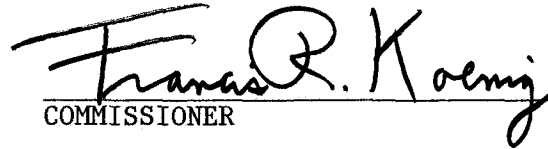
DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

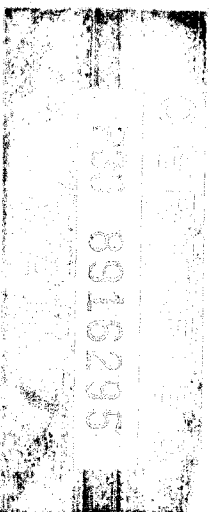
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STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

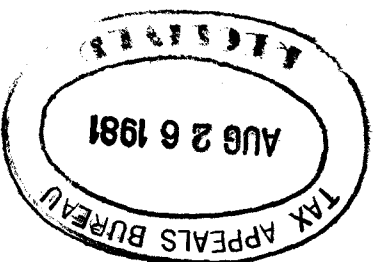


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~~*Personal Ex. Fund*~~

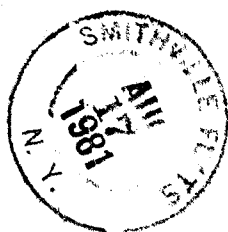
Newborn Truck & Equipment Co.  
~~Smithville Flats, NY~~



*B 1/A*  
*9-8-81*







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

August 14, 1981

Newborn Truck & Equipment Co.  
Smithville Flats, NY

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Phone # (518) 457-6240

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STATE TAX COMMISSION

cc: Petitioner's Representative  
Frank J. Filetto  
East River Rd.  
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Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
NEWBORN TRUCK & EQUIPMENT CO.	:	DECISION
AND	:	
John P. Grant and E. Lance Doxie	:	
Individually and as Co-Partners	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
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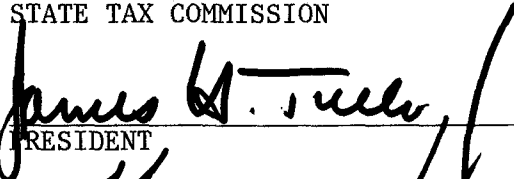
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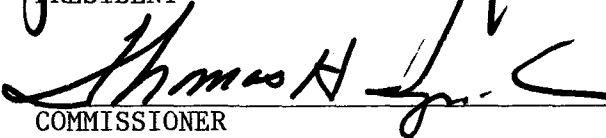
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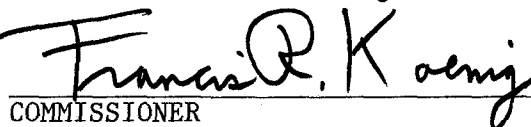
DATED: Albany, New York

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