

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Andrew & Milton Rosenberg
d/b/a A & M Rosenberg

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 Period 8/31/65-8/31/66.

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 July, 1982, he served the within notice of Decision by certified mail upon Andrew & Milton Rosenberg, d/b/a A & M Rosenberg the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Andrew & Milton Rosenberg
d/b/a A & M Rosenberg
c/o Myron M. Nagelberg, Esq.
101 Grand Ave. P.O. 397
Massapequa, NY 11758

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 July, 1982.

Carrie A. Wayland

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Andrew & Milton Rosenberg :
d/b/a A & M Rosenberg : 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 Period 8/31/65-8/31/66. :

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 July, 1982, he served the within notice of Decision by certified mail upon Myron M. Nagelberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Myron M. Nagelberg
101 Grand Ave., P.O. Box 397
Massapequa, NY 11758

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 July, 1982.

Annmarie P. Nagelberg

J. Vredenburg

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

July 16, 1982

Andrew & Milton Rosenberg
d/b/a A & M Rosenberg
c/o Myron M. Nagelberg, Esq.
101 Grand Ave. P.O. 397
Massapequa, NY 11758

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Myron M. Nagelberg
101 Grand Ave., P.O. Box 397
Massapequa, NY 11758
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANDREW ROSENBERG and MILTON ROSENBERG	:	DECISION
d/b/a A & M ROSENBERG	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Fiscal Years	:	
Ending August 31, 1965 and August 31, 1966.	:	

Petitioners, Andrew Rosenberg and Milton Rosenberg, d/b/a A & M Rosenberg, c/o Myron M. Nagelberg, 101 Grand Avenue, Massapequa, New York 11758, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the fiscal years ending August 31, 1965 and August 31, 1966 (File No. 23503).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 2, 1981 at 9:15 A.M. Petitioners appeared by Myron M. Nagelberg, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether income from petitioners' business of leasing portable classrooms was subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. On December 19, 1972, the Audit Division issued a Statement of Audit Changes against Andrew Rosenberg and Milton Rosenberg, d/b/a A & M Rosenberg wherein unincorporated business tax was asserted on the grounds that their business activities were subject to unincorporated business tax. Accordingly,

a Notice of Deficiency was issued on November 26, 1973 in the amount of \$7,318.18 plus interest of \$2,850.85 for a total of \$10,169.03.

2. On May 10, 1978, Andrew Rosenberg and Milton Rosenberg, d/b/a A & M Rosenberg filed a Claim for Credit or Refund of Personal Income Tax in the amount of \$12,330.20. The claim was based on the following facts:

"By virtue of warrant issued and filed, taxpayers were required to pay \$12,330.20 on or about the 15th day of December, 1977, which payment was made to the New York State Tax Commission, State Office Building, Hauppauge, New York 11787 to the attention of John Albano.

Demand is made for return of same in full on the basis that the tax which was levied against the taxpayer was based on the fact that the State alleged that the classrooms which were leased by the taxpayer to various parties and installed on the respective parties' lands were for tax purposes personal property and therefore the business was subject to the unincorporated business tax. Taxpayer claims that for tax purposes, the buildings which were put on foundations sunk into the ground, were connected to sewers, electrical service and water supply, were real property. Therefore, the taxpayer is not subject to the unincorporated business income tax. The real property tax law Section 102 subdivision 12 of the State of New York designates a structure as real property for taxation purposes based upon the existence of conditions of affixation and permanency irrespective of the fact that a right or duty to remove an improvement exists at the expiration of a lease."

3. On August 28, 1978, the Audit Division issued a Notice of Disallowance of petitioners' claim.

4. In 1963, petitioners commenced a business of renting or leasing portable classrooms pursuant to public bids. The units were manufactured and installed by The Champlin Company of Hartford, Connecticut. The portable classrooms were of frame construction and rested on girders which were set upon concrete blocks which topped in-ground concrete piers. The piers were poured concrete which reached the frost line. Only the blocks had to be knocked

down to the frost line and replaced with soil to bring the land back to its original condition at the end of the term. The units were connected to sewer and utility lines. When moved they would be jacked-up with hydraulic equipment and wheels would be placed beneath supporting girders to make a trailer type set-up and moved by trucks. Average rental ranged from three to seven years. In 1964 petitioners had leased two units and in 1965 about fourteen units.

CONCLUSIONS OF LAW

A. That the portable classrooms, leased by petitioner were never permanently affixed to the realty so as to become an integral component thereof or constitute a capital improvement. Therefore the units remained personalty. Charles E. Wood Enterprises, Inc. v. State Tax Commission, 67 A.D.2d 1042, 413 N.Y.S. 2d 765.

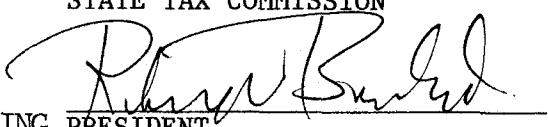
B. That the business of petitioners of leasing tangible personal property (the portable classrooms) is an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and is not excluded therefrom by operation of section 703(e) of the Tax Law.

C. That the petition of Andrew Rosenberg and Milton Rosenberg, d/b/a A & M Rosenberg, is denied and the disallowance of refund by the Audit Division on August 28, 1978 is hereby affirmed.

DATED: Albany, New York

JUL 16 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER