

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Louis Fietta	: : : : : :	: : : : : :
		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 1974, 1975 & 1976.		

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Louis Fietta, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

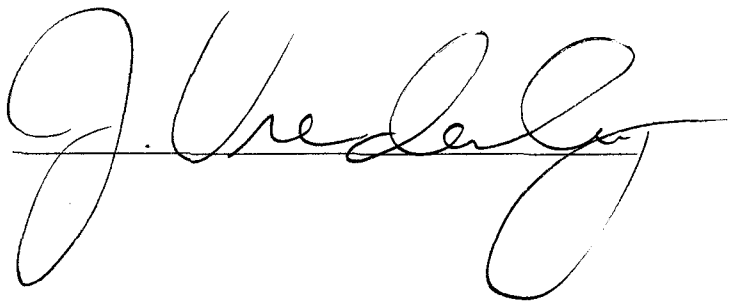
Louis Fietta
RD #2 Sweet Rd.
Manlius, NY 13104

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
4th day of August, 1982.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Louis Fietta

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 1974, 1975 & 1976. :

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Robert J. McVay the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert J. McVay
217 Tilden Dr.
E. Syracuse, NY 13057

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
4th day of August, 1982.

Camie A. Haglund

J. Vredenburg

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

August 4, 1982

Louis Fietta
RD #2 Sweet Rd.
Manlius, NY 13104

Dear Mr. Fietta:

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
Robert J. McVay
217 Tilden Dr.
E. Syracuse, NY 13057
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
LOUIS FIETTA
for Redetermination of Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1974,
1975 and 1976.

DECISION

Petitioner, Louis Fietta, RD #2 Sweet Road, Manlius, New York 13104, filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1974, 1975 and 1976 (File No. 25698).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 29, 1981 at 9:15 A.M. Petitioner appeared by Robert J. McVay, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq. of counsel).

ISSUE

Whether petitioner's income from the operation of two mobile home parks is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Louis Fietta, filed New York State personal income tax returns for the years 1974, 1975 and 1976. On each return petitioner reported a business loss from the operation of a restaurant and bar. He also reported as rental income, income from the operation of two mobile home parks. Petitioner

filed New York State unincorporated business tax returns for the same years on which the business loss from the restaurant and bar was reported.

2. On November 13, 1978, as the result of a field audit, the Audit Division issued a Notice of Deficiency against petitioner asserting additional personal income tax of \$303.24 for 1975 and 1976 and unincorporated business tax of \$4,151.17 for 1974, 1975 and 1976 plus penalty and interest of \$1,157.09, for a total due of \$5,611.50.

The Audit Division held petitioner's rental income from the mobile home parks subject to unincorporated business tax.

3. Petitioner executed a consent fixing the period of limitation for assessment of personal income and unincorporated business taxes for the year 1974, to April 15, 1979.

4. At a pre-hearing conference, the personal income tax issues were resolved and the unincorporated business taxes were adjusted to \$3,718.16. In addition, the negligence penalty imposed pursuant to section 685(b) of the Tax Law was cancelled.

5. Petitioner operated two mobile home parks in the Syracuse area. One park had 190 lots and the other 100 with a 75 percent average occupancy rate. Tenants in the parks owned their own mobile home. Petitioner provided the hook-up for sewer, water, electric and gas. In addition petitioner provided the services of rubbish removal, snowplowing and maintenance of the roads, and sewer and water lines. The tenant is responsible for the maintenance of the lot, heat and utilities.

Petitioner employs a manager at each park to collect rents, rent vacant lots and generally oversee the operation. Petitioner also employs maintenance personnel.

The lots are rented on a month to month basis.

6. Petitioner maintained separate books and records for the mobile home park operation. The bar and restaurant was not located on the premises of either of the mobile home parks.

CONCLUSIONS OF LAW

A. That section 703(e) of the Tax Law provides that an owner of real property, a lessee or a fiduciary shall not be deemed engaged in an unincorporated business solely by reason of holding, leasing or managing real property.

That petitioner's operation of two mobile home parks did not constitute the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law but rather constituted the leasing of real property for his own account which activity is excluded from the meaning of an unincorporated business pursuant to section 703(e) of the Tax Law and 20 NYCRR 203.13. Accordingly, petitioner's income derived therefrom is not subject to the imposition of unincorporated business tax.

B. That the petition of Louis Fietta is granted and the Notice of Deficiency issued November 13, 1978 is cancelled.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER