

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Kenneth M. Godfrey
and Joan A. Godfrey

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.

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Kenneth M. Godfrey, and Joan A. Godfrey the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth M. Godfrey
and Joan A. Godfrey
35-63 159th St.
Flushing, NY 11358

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
18th day of June, 1982.

Connie A. Hagelard

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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of

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and Joan A. Godfrey

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of a Determination or a Refund of Unincorporated
Business Tax under Article 23 of the Tax Law for
the Years 1974 & 1975.

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon George C. Godfrey the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George C. Godfrey
159-15 Northern Blvd.
Flushing, NY 11358

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
18th day of June, 1982.

Connie P. Hagelund

J. Vredenburg

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

June 18, 1982

Kenneth M. Godfrey
and Joan A. Godfrey
35-63 159th St.
Flushing, NY 11358

Dear Mr. & Mrs. Godfrey:

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
George C. Godfrey
159-15 Northern Blvd.
Flushing, NY 11358
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| KENNETH M. GODFREY AND JOAN A. GODFREY | : | DECISION |
| | : | |
| for Redetermination of a Deficiency or for | : | |
| Refund of Unincorporated Business Tax under | : | |
| Article 23 of the Tax Law for the Years 1974 | : | |
| and 1975. | : | |

Petitioners, Kenneth M. Godfrey and Joan A. Godfrey, 35-63 159th Street, Flushing, New York 11358, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1974 and 1975 (File No. 26644).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1981 at 1:15 P.M. Petitioner Kenneth M. Godfrey appeared with George C. Godfrey. The Audit Division appeared by Ralph J. Vecchio, Esq. (Sam Freund, Esq., of counsel).

ISSUES

Whether, and if so to what extent, petitioner Kenneth M. Godfrey may allocate his unincorporated business income to sources without the State of New York.

FINDINGS OF FACT

1. Petitioners, Kenneth M. Godfrey and Joan A. Godfrey, timely filed joint New York State income tax resident returns for the years 1974 and 1975 whereon Kenneth M. Godfrey (hereinafter petitioner) reported business income derived

from his activities as an "Insurance Adjuster". Petitioner filed an unincorporated business tax return for 1975 but did not file such return for 1974.

2. On April 19, 1978 the Audit Division issued a Statement of Audit Changes wherein petitioner's income of \$32,915.00 derived from his aforesaid activities was held subject to the unincorporated business tax for the year 1974.

3. On June 20, 1978, in response to said Statement of Audit Changes, petitioner filed a 1974 unincorporated business tax return which he labeled "amended copy". On such return he allocated business income of \$23,669.00 to New York State. The allocation was "determined from books". In conjunction with said return petitioners filed an amended 1974 New York State Income Tax Resident Return, whereon, based on changes incorporated therein, coupled with the unincorporated business tax computed on said "amended copy", petitioner determined a total balance due of \$666.43, which he paid.

4. On April 5, 1979, the Audit Division issued a Notice of Deficiency against petitioners asserting unincorporated business tax for 1974 of \$1,260.33, plus interest and penalties of \$1,219.83. Such penalties were pursuant to Sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law, for failure to file the 1974 unincorporated business tax return, failure to pay the tax determined to be due and underestimation of personal and unincorporated business tax for both 1974 and 1975 respectively. The resulting total was reduced by the previous payment of \$666.43, yielding a net balance due of \$1,813.73.

5. During the years at issue petitioner conducted an insurance adjusting and appraisal business under the name of Statewide Claims Service.

6. Petitioner contended that in or about April 1974 he opened a bona fide business office in the State of Florida, located at 157 NE 166, North Miami Beach. Such office consisted of one room which was situated adjacent to the

offices of Resources Insurance Company, to which petitioner rendered services as an independent auto appraiser. A written lease was not obtained by petitioner for the premises he occupied. Petitioner claimed to have occupied said office until February or March 1975.

7. Petitioner continued to conduct business in New York State during the years at issue.

8. Petitioner did not claim an allocation of business income to Florida on his 1975 unincorporated business tax return.

9. Petitioner testified that his pertinent business books and records were destroyed in a fire at his brother's New York office where said records were stored. His brother testified that the fire occurred on October 1, 1976.

10. Although petitioner submitted documentation evidencing that he maintained an office, and conducted business in Florida during the period at issue, no evidence was submitted to support the allocation of income to Florida as filed on his 1974 unincorporated business tax return marked "amended copy".

CONCLUSIONS OF LAW

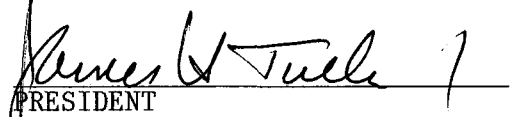
A. That petitioner, Kenneth M. Godfrey, has failed to sustain his burden of proof required pursuant to Section 689(e) of the Tax Law to show the extent to which his 1974 business income may properly be allocated to the State of Florida. Accordingly, petitioner's business income is considered to be derived from New York State in its entirety for taxable years 1974 and 1975.

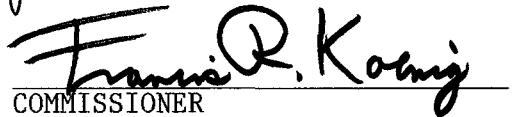
B. That the petition of Kenneth M. Godfrey and Joan A. Godfrey is denied and the Notice of Deficiency dated April 5, 1979 is sustained together with such additional interest and penalty as may be lawfully owing.

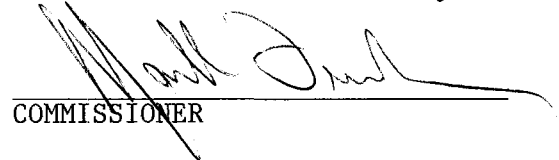
DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER