

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Reuben Pastor, Samuel Pastor and :
Abraham Pastor, Partners :
d/b/a Buffalo Hockey Club : 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 1972 - 1974. :

State of New York
County of Albany

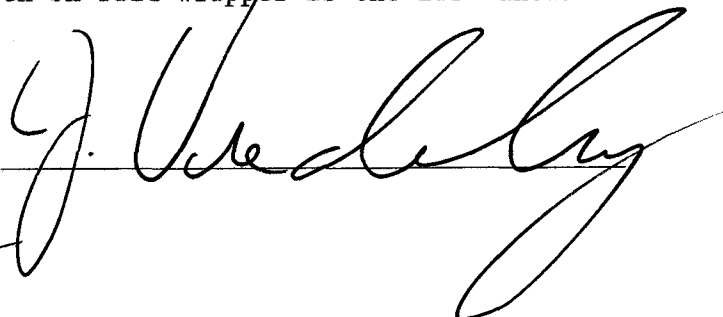
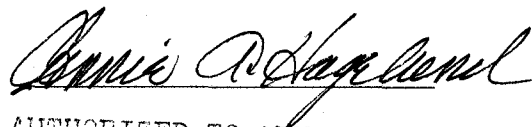
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Reuben Pastor, Samuel Pastor and Abraham Pastor, Partners, d/b/a Buffalo Hockey Club the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Reuben Pastor, Samuel Pastor and
Abraham Pastor, Partners
d/b/a Buffalo Hockey Club
2770 Walden Ave.
Buffalo, NY 14225

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
12th day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Reuben Pastor, Samuel Pastor and :
Abraham Pastor, Partners :
d/b/a Buffalo Hockey Club : 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 1972 - 1974. :

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 12th day of October, 1982, he served the within notice of Decision by certified mail upon Thomas A. Morris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan Lipman
Kavinoky & Cook
120 Delaware Ave.
Buffalo, NY 14202

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
12th day of October, 1982.

Bennie P. Haglund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Reuben Pastor, Samuel Pastor and :
Abraham Pastor, Partners :
d/b/a Buffalo Hockey Club : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Business Tax under Article 23 of the Tax Law for :
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State of New York
County of Albany

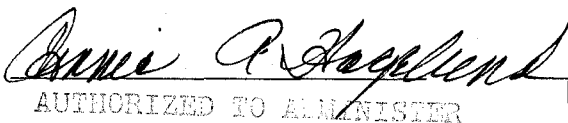
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Thomas A. Morris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas A. Morris
Sunshine, Morris & Co.
5500 Main St., Suite 343
Williamsville, NY 14221

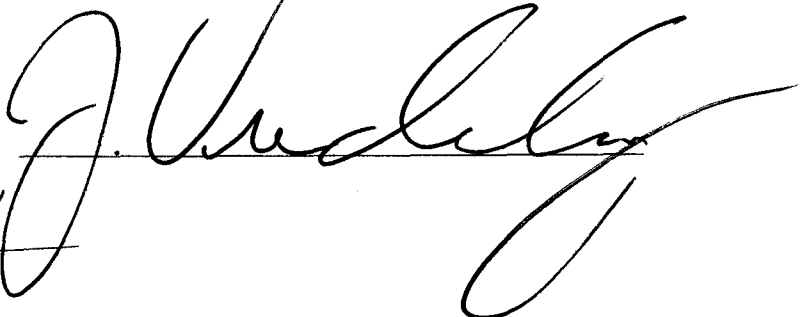
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
12th day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

October 12, 1982

Reuben Pastor, Samuel Pastor and
Abraham Pastor, Partners
d/b/a Buffalo Hockey Club
2770 Walden Ave.
Buffalo, NY 14225

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
Thomas A. Morris
Sunshine, Morris & Co.
5500 Main St., Suite 343
Williamsville, NY 14221
and
Alan Lipman
Kavinoky & Cook
120 Delaware Ave.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
REUBEN PASTOR, SAMUEL PASTOR	:	
and ABRAHAM PASTOR, PARTNERS,	:	DECISION
d/b/a BUFFALO HOCKEY CLUB	:	
	:	
for Redetermination of a Deficiency or Refund	:	
of Unincorporated Business Tax under Article	:	
23 of the Tax Law for the Years 1972, 1973 and	:	
1974.	:	

Petitioners, Reuben Pastor, Samuel Pastor and Abraham Pastor, partners, d/b/a Buffalo Hockey Club, 2770 Walden Avenue, Buffalo, New York 14225, filed a petition for redetermination of a deficiency or refund of unincorporated business tax under Article 23 of the Tax Law for the years 1972, 1973 and 1974 (File No. 15845).

On December 7, 1981, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether the interest income received in the years 1972, 1973 and 1974 by the petitioners pursuant to the provisions of the promissory notes held by each of the petitioners is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Reuben Pastor, Samuel Pastor and Abraham Pastor, did not file unincorporated business tax returns for 1972, 1973 and 1974 for the Buffalo Hockey Club.

2. The Audit Division held that the interest income received on the notes resulting from the installment sale of the assets of the Buffalo Hockey Club, a partnership in liquidation, is held to be subject to the unincorporated business tax. On April 12, 1976, a Notice of Deficiency was issued for 1972, 1973 and 1974 in the amount of \$5,065.50 in unincorporated business tax, plus \$769.88 in interest, for a total sum of \$5,835.38.

3. From July 27, 1956 to May 15, 1970, Reuben Pastor, Samuel Pastor and Abraham Pastor (hereinafter called "petitioners") conducted a business as a partnership under the name of "Buffalo Hockey Club".

4. On or about May 15, 1970, the petitioners sold all of their right, title and interest in the business known as the Buffalo Hockey Club to the Niagara Frontier Hockey Corporation (hereinafter called "Niagara") for the sum of \$1,200,000.00.

5. A portion of the purchase price in the amount of \$300,000.00 was paid in cash on or about the closing date (May 15, 1970) and the balance of \$900,000.00 was paid by delivery of promissory notes in the aggregate amount of \$900,000.00 bearing interest at 4 percent per annum.

6. During each of the years 1972, 1973 and 1974, petitioner Reuben Pastor received the sum of \$18,000.00 per annum as interest on the promissory notes held by him, and petitioners Samuel Pastor and Abraham Pastor received \$9,000.00 per annum as interest on the promissory notes held by each of them.

7. All of the promissory notes followed the same format. During the years at issue the only amounts received by the petitioners was interest income.

8. The petitioners contend that the notes should not be considered unincorporated business gross income. They argued that if the total purchase price had been paid at the time of the closing in 1970 and the entire proceeds were placed in a bank account, the income generated from the use of the bank deposits would not be considered unincorporated business gross income even though these funds could be traced back to the liquidation of the business. The fact that they chose to receive the installment obligations from the entity which purchased their business instead of depositing the proceeds into a bank account should be of no controlling significance. This is not a situation where the petitioners have a continuing interest in the business and the profitability of the business has no effect upon the interest generated by the notes.

The petitioners further contend that the notes are negotiable promissory notes, and, if the petitioners had exchanged these notes for cash or other property and invested such cash or other property in 1970, (or for that matter, at any later period) again the income generated from such investments would not be taxable to the petitioners as unincorporated business gross income.

CONCLUSIONS OF LAW

A. That section 703(a) of the Tax Law defines an unincorporated business as "...any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity...". Petitioners regularly carried on an unincorporated business partnership in the form of the Buffalo Hockey Club until May 15, 1970, when they sold their right, title and interest in and to the business known as the Buffalo Hockey Club to the Niagara Frontier Hockey Corporation.

B. That section 705(a) of the Tax Law defines unincorporated business gross income as follows:

...the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business,...

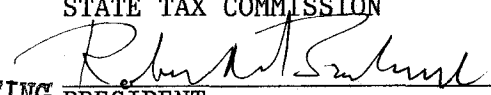
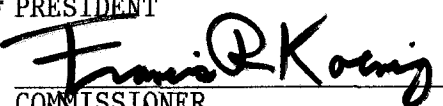

That since the capital gain on the sale of the business has not been fully taxed for unincorporated business tax purposes due to the installment sale, the business is still in liquidation in accordance with section 705(a) of the Tax Law stated above. Therefore, interest income which was realized from the sale of the Buffalo Hockey Club is includible in computing unincorporated business gross income for 1972, 1973 and 1974 within the meaning and intent of section 705(a) of the Tax Law.

C. That the interest income which was derived from the sale of the Buffalo Hockey Club in 1970, constituted income from the use of an asset connected with the petitioners business. The promissory notes are directly connected with the business assets. Therefore, the interest derived therefrom is subject to the unincorporated business tax.

D. That the petition of Reuben Pastor, Samuel Pastor and Abraham Pastor, partners, d/b/a Buffalo Hockey Club is denied and the Notice of Deficiency issued April 12, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 12 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER