

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tintrup Dental Laboratory, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporate Tax :
Procedure under Article 27 of the Tax Law for the :
Years f/y/e 6/30/72-6/30/79. :

State of New York
County of Albany

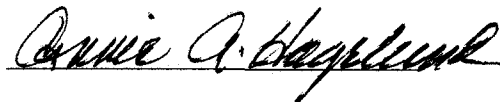
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of January, 1982, he served the within notice of by certified mail upon Tintrup Dental Laboratory, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

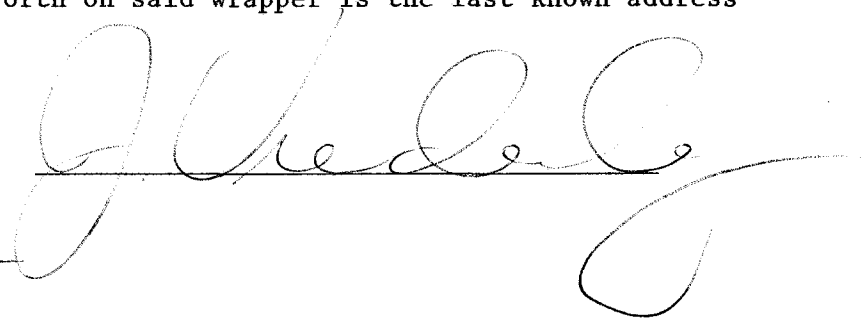
Tintrup Dental Laboratory, Inc.
c/o Frank Tintrup, Pres.
120 E. First St.
Mt. Vernon, NY 10550

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
22nd day of January, 1982.


Arnie A. Haglund



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Tintrup Dental Laboratory, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Procedure under Article 27 of the Tax Law for the :
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State of New York
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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 22nd day of January, 1982, he served the within notice of Decision by certified mail upon Thomas B. Albertson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

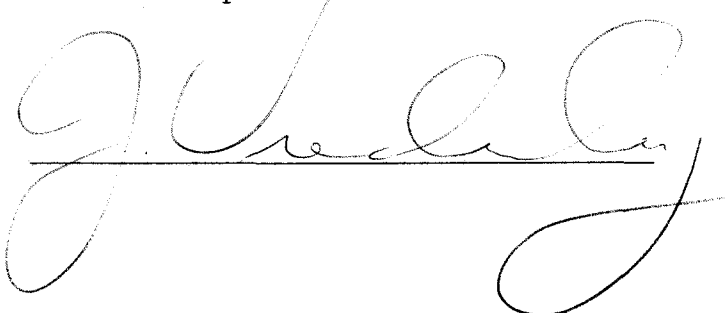
Thomas B. Albertson
Albertson, Simmons, et al
271 North Ave., Box 211
New Rochelle, NY 10802

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
22nd day of January, 1982.





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

January 22, 1982

Tintrup Dental Laboratory, Inc.
c/o Frank Tintrup, Pres.
120 E. First St.
Mt. Vernon, NY 10550

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) 184 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
Thomas B. Albertson
Albertson, Simmons, et al
271 North Ave., Box 211
New Rochelle, NY 10802
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
TINTRUP DENTAL LABORATORY, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for		
Refund of Franchise Tax on Business Corporations:		
under Article 27 of the Tax Law for the Fiscal		
Years Ended June 30, 1972 through June 30, 1979.:		

Petitioner, Tintrup Dental Laboratory, Inc., 120 East First Street, Mount Vernon, New York 10550, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 27 of the Tax Law for the fiscal years ended June 30, 1972 through June 30, 1979 (File No. 30824).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1981 at 9:25 A.M. Petitioner appeared by Albertson, Simmons, Bobrow & Agatston, Esqs. (Thomas B. Albertson, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner's failure to file franchise tax reports and to pay franchise taxes due for the fiscal years at issue in a timely manner was due to reasonable cause, and not to willful neglect.

FINDINGS OF FACT

1. On or about December 19, 1979, petitioner, Tintrup Dental Laboratory, Inc., filed its franchise tax report for the fiscal year ended June 30, 1979

and paid the required taxes, plus interest, and the installment required for the year ended June 30, 1980.

On or about March 24, 1980, petitioner filed its franchise tax reports for the fiscal years ended June 30, 1972 through June 30, 1978 and paid the required taxes with interest.

2. By letter dated April 25, 1980, the Audit Division advised petitioner that there remained a balance of interest and penalties due in the amount \$16,182.36, by reason of petitioner's late filing of reports and late payment of taxes.

3. On or about May 19, 1980, petitioner's president, Frank L. Tintrup, Jr., paid the amount asserted, under protest. He requested that the amount be reduced because petitioner's former accountant had been delinquent in the performance of his duties for the corporation and because payment of nearly \$70,000.00 in taxes, interest and penalties within a six-month period was a heavy burden for a small, family-run corporation to bear.

4. On June 5, 1980, James H. Tully, Jr., as Commissioner of the Department of Taxation and Finance, denied Mr. Tintrup's request and sustained the penalties as assessed.

5. Petitioner's business consists of the manufacture of oral devices, including dentures, bridges, partial castings and orthodontic appliances. The corporation was formed by Mr. Tintrup's father. Mr. Tintrup began his association with the corporation and took the title of president in 1974. For approximately the first two and one-half years of his association with Tintrup Dental Laboratory, Inc., Mr. Tintrup's main responsibility was sales. Thereafter, his responsibilities included hiring and supervising personnel, communicating with the company's dentist-clients and quality control. The other officer of the corporation was

Mr. Joe Wiesel, vice-president. Both officers spend the majority of their time actually overseeing the manufacturing operation.

6. Mr. Tintrup's father engaged an accountant to prepare the corporation's annual statements and all necessary tax returns. Mr. Tintrup recalled that the accountant had been employed by his father since at least the mid-1950's. To Mr. Tintrup's knowledge, the accountant was a certified public accountant and was engaged by another, larger dental laboratory. He had no reason to doubt the accountant's competence and professional expertise and so allowed him to continue with the corporation. He totally relied on the accountant's advice with regard to tax matters.

7. All corporate books and records were kept at the corporate offices and the accountant was permitted full access to them.

8. Sometime in 1976, petitioner received a blank franchise tax report from the Department of Taxation and Finance. When Mr. Tintrup inquired of the accountant whether it was necessary for the corporation to file New York State returns, the accountant replied that petitioner, as a Subchapter S corporation, was not responsible for state franchise taxes. Mr. Tintrup had no recollection of receiving any other form or notification from the Department until 1979.

9. Mr. Tintrup was aware that the accountant had been admitted to the hospital on several occasions, for minor reasons, Mr. Tintrup believed. While Mr. Tintrup noticed that the accountant "seemed to be slowing down a bit", he did not consider him unable to perform his duties for health reasons.

10. When the accountant died in 1979, a new accountant, Mr. Robert Siegel, was engaged by petitioner and by certain of the accountant's other clients. In mid-November, 1979, Mr. Siegel began his review of petitioner's books and records. One of his first requests of Mr. Tintrup was to examine copies of New

York franchise tax reports filed. In Mr. Siegel's words, "Mr. Tintrup was absolutely shocked when I asked for prior corporation tax returns for New York State. He indicated to me that he had never heard of such a thing." Mr. Tintrup further indicated to Mr. Siegel that all bills, including taxes, were always paid on time. Mr. Siegel soon thereafter prepared and filed reports for petitioner and submitted tax payments.

11. Mr. Siegel discovered that at least six of the accountant's other corporate clients had likewise failed to file state franchise tax reports while represented by said accountant. Moreover, the personal income tax returns of the corporate officers had been improperly prepared, for example, by omission of bona fide deductions.

12. In 1977 the Department of Taxation and Finance caused petitioner's charter to be revoked for nonpayment of franchise taxes. Mr. Tintrup was unaware of the revocation until advised by his attorney and Mr. Siegel in 1979.

CONCLUSIONS OF LAW

A. That paragraphs (1) through (3) of subdivision (1) of section 1085 of the Tax Law levy penalties for failure to file franchise tax reports and to pay the amounts shown or required to be shown thereon in a timely manner, unless "such failure is due to reasonable cause and not due to willful neglect."

B. That 20 NYCRR 9-1.5, effective for taxable years commencing on or after January 1, 1976, states that grounds for reasonable cause must be clearly established and may include the following:

"(1) death or serious illness of the responsible officer or employee of the taxpayer, or his unavoidable absence from his usual place of business;

"(2) destruction of the taxpayer's place of business or business records by fire or other casualty;

"(3) reliance on advice of a competent advisor such as an attorney or accountant;

"(4) timely prepared reports misplaced by a responsible employee and discovered after the due date."

The above-quoted regulation was amended, effective April 1, 1981, to delete the third ground and to add the following grounds:

"inability to obtain and assemble essential information required for the preparation of a complete return despite reasonable efforts;

"pending petition to Tax Commission or formal hearing proceedings involving a question or issue affecting the computation of tax for the year of delinquency;

"any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes."

C. That where petitioner retained the services of a certified public accountant; petitioner opened all its books and records to him; petitioner relied in good faith on his advice as to all tax matters; and petitioner's president raised with him the specific question of whether the corporation was required to file franchise tax reports, petitioner's failure to timely file returns and pay tax is due to reasonable cause.

"Where a corporate taxpayer selects a competent tax expert, supplies him with all necessary information, and requests him to prepare proper tax returns, we think the taxpayer has done all that ordinary business care and prudence can reasonably demand." Haywood Lumber & Mining Co. v. Commissioner, 178 F.2d 769, 771 (2d Cir. 1950).

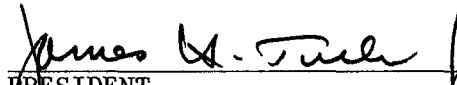
See Leonhart v. Commissioner, 414 F.2d 949 (4th Cir. 1969); Mayflower Investment Co. v. Commissioner, 239 F.2d 624 (5th Cir. 1956); Inter-American Life Insurance Co. v. Commissioner, 56 T.C. 497 (1971), affd. mem. 469 F.2d 697 (9th Cir. 1972); Marprowear Profit-Sharing Trust, 74 T.C. 1086 (1980).

D. That the petition of Tintrup Dental Laboratory, Inc. is hereby granted.

DATED: Albany, New York

JAN 22 1982

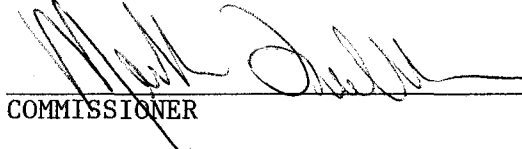
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER