

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Helen Hagstrand :
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 Year 1970. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 11th day of May, 1983, he served the within notice of Decision by certified mail upon Helen Hagstrand, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Helen Hagstrand
5 Bacon St.
Glens Falls, NY 12801

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
11th day of May, 1983.

David Parchuck

Camille A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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State of New York
County of Albany

David Parchuck, 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 11th day of May, 1983, he served the within notice of Decision by certified mail upon Frank V. Williams the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank V. Williams
Edwards, Williams, McManus, Ricciardelli & Coffey, P.C.
Quaker Village, Box 599
Glens Falls, NY 12801

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
11th day of May, 1983.

David Parchuck

Commie A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 11, 1983

Helen Hagstrand
5 Bacon St.
Glens Falls, NY 12801

Dear Ms. Hagstrand:

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
Frank V. Williams
Edwards, Williams, McManus, Ricciardelli & Coffey, P.C.
Quaker Village, Box 599
Glens Falls, NY 12801
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HELEN HAGSTRAND
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1970.

DECISION

Petitioner, Helen Hagstrand, 5 Bacon Street, Glens Falls, New York 12801, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970 (File No. 00382).

A small claims hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on July 21, 1982 at 10:45 A.M. Petitioner appeared by Frank V. Williams, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

I. Whether the income derived by petitioner, Helen Hagstrand, from Glen Haven Nursing Home was for the provision of nursing services and thus exempt from unincorporated business tax.

II. Whether penalties were properly imposed against petitioner for her failure to file unincorporated business tax returns.

FINDINGS OF FACT

1. Petitioner, Helen Hagstrand, and her husband, Arthur P. Hagstrand, filed a New York State Income Tax Resident Return for 1970. Petitioner and her husband did not file an unincorporated business tax return for 1970.

2. On October 29, 1973, the Audit Division issued a Notice of Deficiency (with a copy of a previously issued Statement of Audit Changes) against petitioner Helen Hagstrand. The Notice of Deficiency shows a tax deficiency of \$762.43, plus penalties of \$289.73 and interest of \$116.12, for a total of \$1,168.28. The Statement of Audit Changes provided the following explanation for the deficiency:

"The income from your activities as a Nursing Home Operator is subject to the unincorporated business tax.

An additional charge is imposed under Section 685(c) of the Tax Law for underestimation of tax."

In addition, the Statement of Audit Changes shows the following calculation of unincorporated business tax due:

"Net income from business	\$23,577.91
Less: Allowance for services	<u>4,715.58</u>
Balance	\$18,862.33
Less: Exemption	<u>5,000.00</u>
	\$13,862.33

UNINCORPORATED BUSINESS TAX DUE \$ 762.43"

The figure of \$23,577.91 for "net income from business" was taken from petitioner's New York State Income Tax Resident Return for 1970 which she filed jointly with her husband. This amount was reported in Schedule A, line 4(a), "Business Income", and the type of business income was described by petitioner as "Nursing home".

3. Petitioner, Helen Hagstrand, and her husband, Arthur P. Hagstrand, operated Glen Haven Nursing Home, an unincorporated business located at 15 Bacon Street, Glens Falls, New York 12801, during the tax year at issue.

4. Petitioner, Helen Hagstrand, did not appear and present testimony at the hearing. Her husband, Arthur P. Hagstrand, is deceased.

5. Frank V. Williams, petitioner's representative, testified that he has known the petitioner since 1968 and that she was licensed as a licensed practical nurse, and the income that she derived from the nursing home was for nursing activities.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §689(e), which is incorporated into Article 23, the unincorporated business income tax article, by Tax Law §722, the burden of proof is upon the petitioner to show that the income she derived from Glen Haven Nursing Home is not subject to the unincorporated business tax.

B. That Tax Law §703(c) provides that "(t)he practice of law, medicine, dentistry or architecture, and the practice of any other profession...shall not be deemed an unincorporated business." Petitioner has failed to prove that the income she derived from Glen Haven Nursing Home was for the practice of professional nursing services. Rather, on her 1970 New York State income tax return she described such income as business income from the nursing home. Therefore, it was reasonable for the Audit Division to treat such income as having been derived from the operation of a nursing home.

C. That income derived from the operation of a nursing home is subject to the unincorporated business tax. Matter of Frank L. Hoffman, State Tax Commission, September 19, 1980.

D. That petitioner's failure to file an unincorporated business tax return for the year at issue was due to reasonable cause and not due to willful neglect; therefore, all penalties pursuant to Tax Law §685(a) are cancelled.

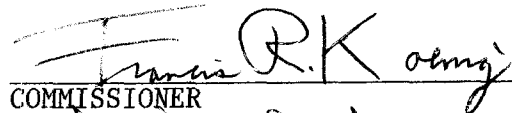
E. That the petition of Helen Hagstrand is granted only to the extent noted herein in Conclusion of Law "D"; and the petition is in all other respects denied.

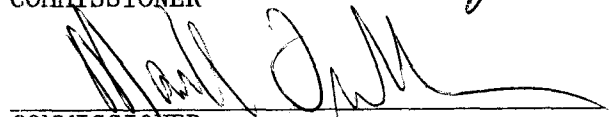
DATED: Albany, New York

MAY 11 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER