

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Donald A. Monro :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1974 & 1975. :
:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 30th day of October, 1985, he served the within notice of Decision by certified mail upon Donald A. Monro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald A. Monro
111 E. Chestnut, Apt. 29K
Chicago, IL 60611

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
30th day of October, 1985.

David Parchuck

Bernie C. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 30, 1985

Donald A. Monro
111 E. Chestnut, Apt. 29K
Chicago, IL 60611

Dear Mr. Monro:

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) 690 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DONALD A. MONRO	:	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.	:	

Petitioner, Donald A. Monro, 111 East Chestnut, Apt. 29K, Chicago, Illinois 60611, 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. 26548).

A formal hearing was held before Brian L. Friedman, Hearing Officer, at the office of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on April 23, 1985 at 1:15 p.m., with all briefs to be submitted by June 24, 1985. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq. of Counsel).

ISSUE

Whether the sum of \$40,000.00 received by petitioner from St. Joe Minerals Corp. is subject to Unincorporated Business Tax for 1974.

FINDINGS OF FACT

1. Petitioner, Donald A. Monro, filed a New York State Combined Income Tax Return (Form IT-208) for the year 1974 with his wife, Grace Y. Monro, who is not a party to this proceeding. On Schedule A of the return, petitioner reported under the category of "other income", the amount of \$117,669.98. Through correspondence between the Audit Division and petitioner, the Audit Division determined that \$40,000.00 of the said "other income" was subject to

the Unincorporated Business Tax. Accordingly, on February 22, 1979, the Audit Division issued to petitioner a Statement of Audit Changes which contained the following explanation and computation of Unincorporated Business Tax due:

"From information submitted, we have determined that the income from your activities as Consultant is subject to the Unincorporated Business Tax.

The '80%' clause refers to 'the practice of law, medicine, dentistry or architecture, or any other profession' -- etc.

UNINCORPORATED BUSINESS TAX

Net income before salary credit	\$40,000.00
Less: Allowance for services	<u>5,000.00</u>
Balance	\$35,000.00
Less: Exemption	<u>5,000.00</u>
Taxable income	\$30,000.00
Tax on above	\$1,650.00
Less: Credit	<u>0</u>
Unincorporated Business Tax Due	\$1,650.00
Unincorporated Business Tax Previously Stated	<u>0</u>
UNINCORPORATED BUSINESS TAX DUE	\$1,650.00
Interest	<u>385.01</u>
TOTAL DUE	\$2,035.01"

On March 16, 1979, the Audit Division issued a Notice of Deficiency to petitioner asserting additional tax due for 1974 in the amount of \$1,650.00 plus interest¹.

2. For several years prior to 1974, petitioner was a shareholder and a vice-president of Transworld Petroleum ("Transworld"). Petitioner's duties for Transworld were to develop oil refineries and petrochemical plants.

1 A Notice of Deficiency was also issued for the year 1975. A refund owed to petitioner for the year 1976 was applied to this deficiency and, therefore, the year 1975 is no longer in issue. Petitioner conceded that the year 1975 is no longer in issue.

3. Due to business disagreements with the president and one of the vice-presidents of Transworld, the petitioner and two other vice-presidents decided to sell their 41 percent interest in Transworld. A tentative agreement was reached for the purchase of this minority interest in Transworld, but was subsequently withdrawn since the purchasers decided that they were only interested in purchasing 100 percent of the shares.

4. Three corporations, St. Joe Minerals Corp., Candel Oil, Ltd. and Apexco, Inc. thereupon made an oral proposal to purchase 100 percent of the shares of Transworld for \$4,150,000.00. As part of this proposal, these corporations offered employment to petitioner and the two other vice-presidents for one year at \$40,000.00 per year to each if they could persuade the president and the remaining vice-president to sell their 59 percent of the shares of Transworld to these three corporations. Petitioner's group was successful in convincing the president and the remaining vice-president to sell and a written agreement was entered into on October 3, 1973. There was no mention in this written agreement about the \$40,000.00 payments to the three vice-presidents.

5. During 1974, petitioner was paid his \$40,000.00 in equal monthly installments. No Federal, State or Social Security taxes were withheld from any of these monthly payments.

6. Neither St. Joe Minerals Corp., Candel Oil, Ltd. or Apexco, Inc. owned or operated any refineries or petrochemical plants. All three corporations were in the business of drilling for crude oil and then producing and selling the same.

7. Petitioner had no qualifications to perform consulting services to the purchasers of Transworld since his field of expertise was in refineries and petrochemical plants.

8. Although St. Joe Minerals Corp. made available an office at 46th Street and Park Avenue, New York, New York for petitioner, he used this office only on an infrequent basis and never performed any work for any of the three corporations which purchased Transworld. Any and all work performed by petitioner at the office provided by St. Joe Minerals Corp. was personal in nature.

CONCLUSIONS OF LAW

A. That 20 NYCRR 203.1(a) defines an unincorporated business as follows:

"(A)n unincorporated business means any trade, business or occupation conducted, engaged in or being liquidated by an individual... In general, the trades, businesses or occupations which constitute an unincorporated business when conducted or engaged in (or when they are being liquidated) by an individual or an unincorporated entity include, without limitation, all phases of such activities as mining, farming, manufacturing and processing, merchandising, banking and financing, trucking and other transportation services, brokerage services of all types and any other activity which involves the leasing of or trading or dealing in real or personal property or the performing of services of any kind. Where a doubt as to the status of an activity exists, all the relevant facts and circumstances must be considered in determining whether the activity or the transactions involved constitute a trade, business or occupation for the purposes of this section. Generally, the continuity, frequency and regularity of activities, as distinguished from casual or isolated transactions, and the amount of time, thought and energy devoted to the activities or transactions are the factors which are to be taken into consideration" (emphasis added).

B. That the payments received by petitioner from St. Joe Minerals Corp., Candel Oil, Ltd. and Apexco, Inc. were in the nature of consideration for petitioner's efforts in negotiating the sale of 100 percent of the stock of Transworld to these three corporations and were not compensation for consulting services provided on a continuous, frequent and regular basis. Therefore, said payments to petitioner did not constitute compensation resulting from the carrying on of an unincorporated business in accordance with the provisions of section 703(a) of the Tax Law and 20 NYCRR 203.1(a).

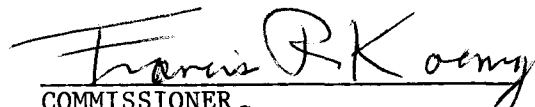
C. That the petition of Donald A. Monro is granted and the Notice of Deficiency issued March 16, 1979 for unincorporated business tax is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 30 1985


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Tax Commission
TAX APPEALS BUREAU

State Campus
Albany, New York 12227

John J. Sollecito, Director
(518) 457-1723

May 29, 1985

Napoleon Taxi Service
Rd 2, Swartz Rd., Box 464
Olean, NY 14760

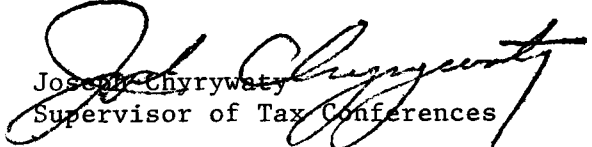
Gentlemen:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 690 & 722 of the Tax Law, any proceeding in court to review this decision must be commenced 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 the undersigned at the above address.

Very truly yours,


Joseph Chyrywat
Supervisor of Tax Conferences

cc: Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Napoleon Taxi Service	:	<u>DEFAULT ORDER</u>
	:	85-C-10
for Redetermination of a Deficiency or Revision of	:	
a Determination or Refund of Unincorporated	:	
Business Tax under Article 23 of the Tax Law for	:	
the Years 1979 & 1980.	:	

Petitioner(s) Napoleon Taxi Service filed a petition for redetermination of a deficiency or revision of a determination or refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1979 & 1980. File No. 53576.

A pre-hearing conference on the petition was scheduled before Thomas Dwyer, at the offices of the State Tax Commission, State Office Bldg., 65 Court Street, Buffalo, New York 14202 on Thursday, March 21, 1985 at 1:00 p.m. Notice of said pre-hearing conference was given to petitioner(s). Petitioner(s) did not appear at the pre-hearing conference. A default has been duly noted.

Now on motion of the State Tax Commission, it is

ORDERED that the petition of Napoleon Taxi Service be and the same is hereby denied.

DEFAULT ORDER
ADOPTED BY THE STATE TAX COMMISSION
ALBANY, NEW YORK
MAY 29, 1985