

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles E. Noyes :
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 1979 - 1980. :
:

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 Charles E. Noyes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles E. Noyes
Cortlandt Manor Rd.
Katonah, NY 10536

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

James O. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles E. Noyes :
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. :
:

AFFIDAVIT OF MAILING

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 William J. Hogan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William J. Hogan
36 Temple Rd.
Dobbs Ferry, NY 10522

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 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
30th day of October, 1985.

David Parchuck

Annie G. Highland
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 30, 1985

Charles E. Noyes
Cortlandt Manor Rd.
Katonah, NY 10536

Dear Mr. Noyes:

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: Petitioner's Representative
William J. Hogan
36 Temple Rd.
Dobbs Ferry, NY 10522
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHARLES E. NOYES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1979	:	
and 1980.	:	

Petitioner, Charles E. Noyes, Cortlandt Manor Road, Katonah, New York 10536, 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 1979 and 1980 (File No. 44304).

A 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 May 21, 1985 at 3:15 P.M., with all briefs to be submitted by June 15, 1985. Petitioner appeared by William J. Hogan. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether petitioner may allocate a portion of his unincorporated business net income to sources without the State of New York.

FINDINGS OF FACT

1. Charles E. Noyes (hereinafter "petitioner") timely filed a New York State Unincorporated Business Tax Return for each of the years 1979 and 1980 whereon he reported business net income of \$28,128.87 (1979) and \$35,633.00 (1980) derived from his activities as an outside salesman. On each return, petitioner allocated 86 percent of such net income to sources without the State

of New York. Although petitioner's personal residence was the only address reported as his "business address" on each return, on New York State business allocation schedules annexed thereto, he listed both his personal residence and the "main sales office" of his principal, located at 1111 Chester Avenue, Cleveland, Ohio 44114, as places where he carried on business.

2. On March 15, 1983, the Audit Division issued a Statement of Audit Changes to petitioner wherein his entire net business income reported for each year at issue was held fully allocable to New York State based on the following explanation:

"Information submitted does not indicate that the Ohio office is maintained by you. Therefore, all business income derived from services performed is subject to New York State Unincorporated Business Tax."

Accordingly, a Notice of Deficiency was issued against petitioner on April 8, 1983 asserting unincorporated business tax for 1979 and 1980 of \$1,841.12, plus interest of \$524.83, for a total due of \$2,365.95.

3. During the years at issue petitioner was an independent outside salesman for Penton/IPC, Inc. ("Penton"). His duties consisted of the sale of advertising space for Occupational Hazards magazine. His territory consisted of approximately nine states in the eastern portion of the United States and a part of Canada.

4. Petitioner was compensated on a commission basis. The allocation claimed on each return was computed based on the location, either within or without New York State, from which such commissions were generated.

5. Petitioner spent most of his time on the road soliciting and making sales within his assigned territory. The first several days of each month were spent placing business phone calls from the office maintained in his New York

personal residence. All related paperwork was completed either at home or on the road.

6. Although petitioner spent only two to four days per year at Penton's Ohio office, he alleged that such office constituted his regular place of business because he reported to Penton by telephone on a daily basis and office space was made available to him during the infrequent occasions he was physically present.

CONCLUSIONS OF LAW

A. That section 707(a) of the Tax Law provides that:

"General. -- If an unincorporated business is carried on both within and without this state, as determined under regulations of the tax commission, there shall be allocated to this state a fair and equitable portion of the excess of its unincorporated business gross income over its unincorporated business deductions. If the unincorporated business has no regular place of business outside this state, all of such excess shall be allocated to this state."

B. That 20 NYCRR 207.2(a) provides, in pertinent part, that:

"In general, an unincorporated business is carried on at any place either within or without New York State where the unincorporated business entity has a regular place of business. The occasional consummation of an isolated transaction in or at a place where no regular place of business is maintained does not constitute the carrying on of a business at such place. A regular place of business is any bona fide office, factory warehouse or other place which is systematically and regularly used by the unincorporated business entity in carrying on its business."

C. That 20 NYCRR 207.2(b) provides, in pertinent part, that:

"If the unincorporated business entity has no regular place of business outside New York State, all of the excess of its unincorporated business gross income over its allocable unincorporated business deductions shall be allocated to this State."

D. That Penton's Ohio office did not constitute a regular place of business for petitioner. Accordingly, since petitioner did not maintain a regular place of business without New York State, his entire business net


profit for 1979 and 1980 is properly allocated to New York State within the meaning and intent of section 707(a) of the Tax Law.

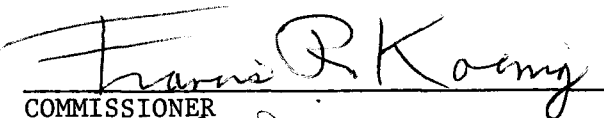
E. That the petition of Charles E. Noyes is denied and the Notice of Deficiency issued April 8, 1983 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 30 1985


PRESIDENT


COMMISSIONER


COMMISSIONER