

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN PATTEN and NEWELL,

AFFIDAVIT OF MAILING

BOLAND and PATTEN
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income and :
Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1972. :

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of March , 1977, ~~she~~ he served the within
Notice of Decision by (certified) mail upon John Patten
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. John Patten
149-32 41st Avenue
Flushing, New York
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

7th day of March , 19 77

Bruce Batchelor

[Signature]



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

March 7, 1977

TELEPHONE: (518) **457-1723**

Mr. John Patten
149-32 41st Avenue
Flushing, New York

Dear Mr. Patten:

Please take notice of the **DECISION**
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 an adverse deci-
sion 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 or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

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c/o Curtis Newell
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~~of the~~ petitioner herein and that the address set forth on said wrapper is the
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Sworn to before me this

7th day of March , 19 77

Bruce Batchelor

Janet M. [Signature]



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 7, 1977

TELEPHONE: (518) **457-1723**

✓
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c/o Curtis Newell
132-35 Sanford Avenue
Flushing, New York**

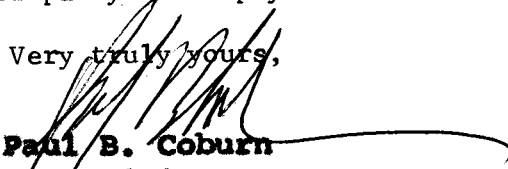
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Very truly yours,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
~~Taxpayer's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
JOHN PATTEN and NEWELL, BOLAND and PATTEN	:	DECISION
for Redetermination of a Deficiency or for Refund of Personal Income and Unin- corporated Business Taxes under Articles 22 and 23 of the Tax Law for the Year 1972.	:	

Petitioner, John Patten, of 149-32 41st Avenue, Flushing, New York and the partnership of Newell, Boland and Patten c/o Curtis Newell of 132-35 Sanford Avenue, Flushing, New York, have filed petitions for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1972. (File No. 2-29999915). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission at Two World Trade Center, New York, New York on November 20, 1974 and continued before Edward L. Johnson, Hearing Officer, on May 19, 1976 at 1:15 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq. of counsel).

ISSUES

I. Whether the jeopardy assessment for New York State personal income tax based on an arrest for selling narcotic drugs should be sustained on the ground that petitioner, John Patten, had additional income in 1972.

II. Whether petitioner, John Patten, was liable as a partner with his alleged co-conspirators in a partnership subject to unincorporated business tax in 1972 under Section 703 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, John Patten, was arrested in New York City on or about September 23, 1972 along with John Boland and Curtis Newell and charged with illegally selling dangerous drugs, and with felonious criminal conspiracy. Newspaper accounts reported that cash of about \$28,000.00 had been seized (in the home of Curtis Newell) in connection with the arrests, which were heralded as the "break-up of a major narcotic operation".

2. A Notice and Demand for Payment of Personal and Unincorporated Business Taxes under Jeopardy Assessment, was issued by the Special Investigations Bureau on November 9, 1972 against petitioner, John Patten, for a personal income tax deficiency of \$18,870.94 for the shortened tax year of January 1, 1972 through November 9, 1972.

A Notice and Demand for Payment of Personal and Unincorporated Business Taxes under Jeopardy Assessment was issued by the Special Investigations Bureau against the partnership of Newell, Boland and Patten and against the individuals Curtis Newell, John Boland and John Patten for an unincorporated tax deficiency for 1972 of \$20,350.00.

3. The Special Investigations Bureau determined that the alleged narcotic traffic activities of the petitioner, John Patten, with those of Curtis Newell and John Boland constituted the carrying on of a partnership subject to unincorporated business tax. Based upon projections from police sources as to the cost of cocaine, the supplies purchased and estimated sales, the Special Investigations Bureau set up an estimated partnership income worksheet for the shortened 1972 tax year. The Internal Revenue Service also made a jeopardy assessment for Federal income taxes for 1972 against petitioner, John Patten. Information as to the wages and withholding taxes deducted from those wages was supplied by IRS to the Special Investigations Bureau. Using all of the information available, the Special Investigations Bureau computed the partnership income, the gross income of each partner, the New York State taxable income of each partner, and the amount of New York State income tax due. Notices of the deficiencies for personal income tax and unincorporated business tax for 1972 were then issued.

4. Petitioners, John Patten and the partnership of Newell, Boland and Patten, timely filed petitions for redetermination of deficiencies for personal income tax and unincorporated business tax assessed for 1972.

5. An indictment for Criminally Selling a Dangerous Drug First Degree was returned by a Queens County grand jury against petitioner, John Patten, on October 3, 1972 under Indictment No. 3518-72. On August 21, 1974, petitioner, John Patten, was placed on trial in Supreme Court, Queens County, before Judge Rose L. Rubin and a jury. On September 5, 1974, the defendant was found Not Guilty by a jury verdict. The arresting police officer, upon whose allegations the indictment had been returned, appeared and testified at the trial.

6. On November 13, 1974 in Queens County, Indictment No. 2725/74 was returned against petitioner, John Patten, to supercede Indictment No. 3517/72 dated October 3, 1972, on the charge of Conspiracy 2nd Degree, a Class E. felony. John Boland, one of the alleged partners in the narcotics selling business, was also named in the superceding indictment No. 2725/74.

7. On May 5, 1975 in a Criminal Term of Queens County Supreme Court before Honorable Rose L. Rubin, John Boland had his case severed under Indictment No. 2725/74. He entered a plea of Guilty to Attempted Conspiracy Second Degree, a Class A misdemeanor. In open court upon

questioning by the presiding judge, defendant John Boland stated about the petitioner, John Patten, "Mr. Patten wasn't involved."

8. On February 20, 1976, on motion of the Assistant District Attorney in Queens County Supreme Court before Honorable Rose L. Rubin, Indictment No. 2725/74 against petitioner, John Patten, was dismissed for reasons stated on the record. The presiding judge ordered the record sealed.

9. Petitioner, John Patten, was an employee of Chase Manhattan Bank and was casually acquainted with John Boland. John Boland was engaged in buying and selling cocaine, and had enlisted the aid of Detective William Brennan from July, 1972 until September 21, 1972. Curtis Newell worked with John Newell in the narcotic business. Petitioner, John Patten, bought an automobile from John Boland. Someone, apparently ignorant of the change in ownership, smashed the windows of the car. Boland asked the detective to telephone petitioner, John Patten, at his place of employment. Thereafter, Detective Brennan met and accompanied petitioner, John Patten, to several places. They met John Boland and Curtis Newell. The accounts differ as to what occurred. Detective Brennan testified that petitioner, John Patten, assisted in cutting and packaging cocaine at the apartment of Curtis Newell and carried away about two ounces of the drug with a street sale value of \$1,500.00 to \$2,000.00. Petitioner stated that he did not see any drugs, he did not package any

cocaine, and he never took any of it from anyone at any time.

He denied ever working for John Boland.

10. The Special Tax Investigator had no independent knowledge or evidence about the participation of the petitioner, John Patten, or the existence or operation of a partnership with John Boland and Curtis Newell. He relied entirely on the information supplied by Detective William Brennan.

11. The Internal Revenue Service, after conducting its investigation of the Federal income tax jeopardy assessment, abated it against the petitioner, John Patten. His Federal income tax return for 1972 was accepted as filed, and IRS notified him that monies seized would be returned to him. The money seized from him had been in his employer-bank savings account.

CONCLUSIONS OF LAW

A. That the issue of additional taxable income which was the subject of the Federal jeopardy assessment was the subject of the jeopardy assessment regarding New York State income tax for 1972. While the State Tax Commission is not legally bound by the finding of the Internal Revenue Service as to that issue, under Section 689(f) of the Tax Law, evidence of that finding could be received and considered at the formal hearing. That assessment was abated in full by IRS after examination. After a jury trial on the question of his alleged illegal narcotic activities, and after exculpation in

open court by his alleged co-conspirator, the petitioner John Patten, had the indictment for conspiracy dismissed on the motion of the District Attorney. No credible evidence of his having had additional taxable income in 1972 has been adduced against petitioner. The jeopardy assessment for 1972 New York State personal tax is abated.

B. That petitioner, John Patten, was not engaged in a partnership with John Boland and Curtis Newell conducting a narcotics business in 1972 subject to unincorporated business tax under Section 703 of the Tax Law.

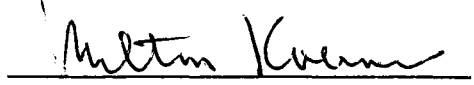
C. That the petition of petitioner, John Patten, is granted. The jeopardy assessments dated November 9, 1972 for personal income tax and for unincorporated business tax are cancelled as to petitioner, John Patten.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

(4-76) 25M FORMAL HEARING

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Newell, Boland and Patten
c/o Curtis Newell
132-35 Sanford Avenue
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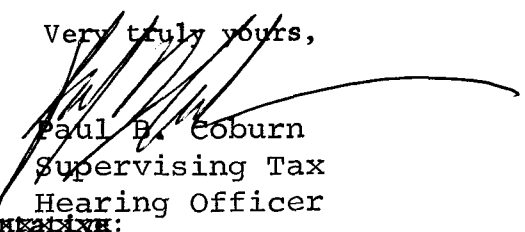
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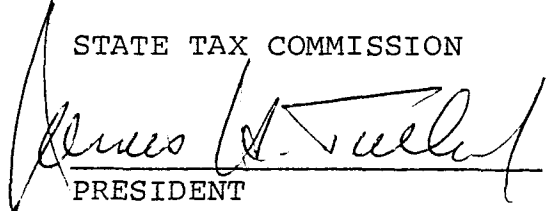
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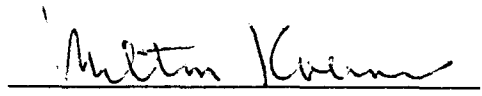
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