

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ESTATE OF SAMUEL ROSENTHAL

DECISION

for Redetermination of a Deficiency **or** for  
Refund of New York State Personal Income Tax  
under Article **22** **of** the Tax Law, New York City :  
Personal Income Tax under Chapter **46**, Title T  
**of** the Administrative Code of the City of New :  
York and New York State Unincorporated Business  
Tax under Article **23** of the Tax Law **for** the  
Year **1980**.

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Petitioner, Estate of Samuel Rosenthal, c/o Fred Rosenthal & Charles  
Berkman, **26** Court Street, Brooklyn, New York **11242**, filed a petition for  
redetermination of a deficiency or for refund of New York State personal income  
tax under Article **22** of the Tax Law, New York City personal income tax under  
Chapter **46**, Title T **of** the Administrative Code of the City **of** New York and New  
York State unincorporated business tax under Article **23** of the Tax Law for the  
year **1980** (File No. **51640**).

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 July **15**, **1986** at **2:45** P.M., with all briefs to be submitted by September  
**1986**. Petitioner appeared by Fred R. Rosenthal, Esq. The Audit Division  
appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether an adjustment attributing additional income **to** Samuel Rosenthal as  
the result of a New York City audit was proper.

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6. The decedent died on September 3, 1985. His son, Fred Rosenthal, is both his representative in this proceeding and the executor of his estate.

7. The decedent's representative alleged that the New York City audit was erroneous for various reasons. However, he offered no documentation to support such allegation. He claimed that the City Department of Finance was in possession of all of the decedent's pertinent books and records.

8. The decedent's representative alleged that a hearing was scheduled with the City Department of Finance for July 21, 1986 with respect to the city adjustment at issue. Although he was granted until September 1, 1986 to submit either a New York City final determination or records relevant to the audit, no such documentation was forthcoming.

9. The decedent's representative contended that the deficiency at issue was previously paid in order to stop the accruing of additional interest. To support such contention he submitted a copy of his letter of December 30, 1985 and a copy of a check of the same date payable to the order of the New York State Department of Taxation and Finance for \$9,575.00. Said amount was comprised of the ~~tax~~ deficiency asserted herein plus interest to December 31, 1985. The Audit Division had no record of such payment being made or credited. Although the decedent's representative agreed to submit the original cancelled check as substantiation of such payment, he failed to do so.

#### CONCLUSIONS OF LAW

A. That the Estate of Samuel Rosenthal has failed to sustain its burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.00 of the Administrative Code of the City of New York, to show that the adjustment made as the result of the New York City audit was improper or erroneous.

Accordingly . . .

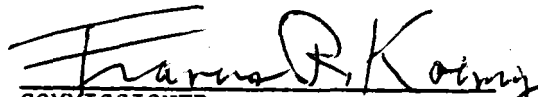
B That the petition of the Estate of Samuel Rosenthal is denied and the Notice of Deficiency issued June 10, 1983 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 30 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

