

## BUREAU OF LAW

## MEMORANDUM

1966 Income Tax Determinations  
A-Z  
Kaplan, Abraham,  
v. State Tax Comm.

TO: Commissioners Murphy, Palestin and Macduff  
FROM: E. H. Best, Counsel  
SUBJECT: ABRAHAM KAPLAN v. STATE TAX COMMISSION

The Attorney General has recommended the acceptance of \$1,500 in full settlement of the above matter relating to an assessment for the year 1952 of additional taxes in the amount of \$2,369.23 made on September 27, 1955 on which there is due and owing additional interest up to date in the amount of \$1,279.38.

The determination sustained the imposition of an assessment on the ground that the taxpayer had failed to file a demand for hearing. The record shows that no demand for hearing was received in this office. The testimony of the taxpayer's representative at a formal hearing before Mr. Gifford was to the effect that he placed the letter in the outgoing mail receptacle in his secretary's office and that presumably she mailed it. The hearing officer was of the opinion in which I concurred that such testimony was not evidence that anyone had placed such a letter in a U. S. Post Office receptacle, and consequently was not proof that any demand was mailed.

However, in my opinion I have pointed out that if proof were given of a deposit of the demand in a mailbox, a presumption of receipt by the State Tax Commission would have arisen. Furthermore, the hearing officer was of the opinion that if the demand for hearing were filed timely, the taxpayer should have been allowed a deduction and the relief granted.

The taxpayer's offer, therefore, may be considered from an equitable rather than a legal view point, and the Attorney General's recommendation may be accepted under such consideration.

MS:ca  
Enc.

March 11, 1966

E. H. Best  
Counsel

I believe a factual dispute is a proper subject of compromise; The result is a legal disposition. I concur that this matter be compromised as recommended. March 22/66

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