

STATE OF NEW YORK
STATE TAX COMMISSION

Peps Inc. Draves Ernest
1970

In the Matter of the Petition

of

Ernest F. Drew

For a Redetermination of a Deficiency or
a Refund of Personal Income Taxes :
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) ending 8/31/60

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Claire A. Draves , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of November , 1970 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Samuel J.

Lowenstein, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Samuel J. Lowenstein, Esq.
51 Madison Avenue
New York, New York 10010

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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 November , 1970

Ernest Wright

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

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Notice of Decision (or Determination) by (certified) mail upon Ernest F. Drew
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Ernest F. Drew
165 E. 66 Street
New York, New York
and by depositing same enclosed in a postpaid properly addressed wrapper in a
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the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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 November , 1970

Janet Wright

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application
of
ERNEST F. DREW
for a Revision or for Refund of Personal
Income Taxes under Article 16 of the
Tax Law for the Year ending 8/31/60

DETERMINATION

Ernest F. Drew applied for a revision or for refund of personal income taxes under Article 16 of the Tax Law for the year ending August 31, 1960. A formal hearing was held in the offices of the State Tax Commission, New York, New York, on January 5 and March 12, 1970.

The applicant appeared through Samuel J. Lowenstein, Esq. and the Income Tax Bureau was represented by Edward H. Best, Esq. (Albert J. Rossi, Esq. of counsel).

FINDINGS OF FACT

1. On April 12, 1966, a notice of deficiency was issued by the Income Tax Bureau under assessment number AB 60311 for the year ended August 31, 1960, on the grounds that no income tax return was filed and no tax was paid for that year.

2. Samuel J. Lowenstein, Esq. mailed a return on December 15, 1960, on behalf of the taxpayer. The retained copy of the return contained a notation of mailing by Samuel J. Lowenstein, Esq.

3. Partial payment of the tax was made by a check mailed with the return in the amount of \$1,580. Mr. Samuel J. Lowenstein, Esq. testified concerning this and an analysis of applicant's personal account made for his business reflects said payment.

4. The evidence failed to establish the payment of \$2,500 by withholding tax. Neither the withholding tax statements nor the analysis of applicant's personal account, made for his business, show payment of withholding tax.

5. The failure to pay the tax was excusable.

DETERMINATION

A. The deficiency in income tax for the year ended August 31, 1960, is redetermined to be \$2,500. The application for refund of the deficiency which has been paid is denied.

B. Pursuant to Section 684 of the Tax Law, interest on the deficiency, computed from December 10, 1960, the due date of the tax, to May 10, 1966, the date of payment of the deficiency, is \$810.25. The application for refund of said interest is denied.

C. The penalty is cancelled and remanded.

It is ordered that petitioner's application be granted to the extent that the sum of \$139.75, the difference between the sum of \$950.00, the portion of the penalty and interest paid, and the interest due of \$810.25 as aforesaid, be refunded.

DATED: Albany, New York
November 27, 1970

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER