

STATE OF NEW YORK
STATE TAX COMMISSION

M. Rank

*Income Tax
Letter*

Levine, Arthur

1970

In the Matter of the Petition

of

The Estate of Arthur I. Levine

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

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) and Periods :
1956; 1957; Jan. 1, 1958 to Jan. 13, 1958;
Jan. 14, 1958 to Dec. 31, 1958; and 1959
State of New York
County of Albany

Janet Wright, 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 9th day of March, 1970, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon The Estate of
Arthur I. Levine (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Estate of Arthur I. Levine
Betsy Levine, Executrix
218 La Puerta Way
Palm Beach, Florida
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

9th day of March, 1970.

Marie Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application

of

The Estate of ARTHUR I. LEVINE

DETERMINATION

For Revision or Refund of Personal
Income Taxes under Article 16 of
the Tax Law for the periods and
Years 1956; 1957; Jan. 1, 1958 to
Jan. 13, 1958; Jan. 14, 1958 to
Dec. 31, 1958; and 1959.

The taxpayers having filed an application pursuant to Tax Law Section 374 for revision or refund of personal income tax imposed by Article 16 of the Tax Law for the years and periods 1956; 1957; Jan. 1, 1958 through Jan. 13, 1958; Jan. 14, 1958 through Dec. 31, 1958; and 1959, under notices of additional assessment issued under date of March 21, 1963, and such application having been denied and a hearing thereon having been demanded and duly scheduled for 9:30 A. M. on September 16, 1969, at Room 779, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer, and no appearance having been made by the taxpayer or by anyone on his behalf, and upon the application of Alexander Weiss of Counsel to Edward H. Best, appearing on behalf of the Income Tax Bureau, and the file of the Department of Taxation and Finance with respect to such applications having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) Neither the taxpayer nor anyone on his behalf appeared at the time and place of the hearing. The law firm representing the taxpayer notified the Commission that the firm no longer

represented the taxpayer.

(2) Assessments were issued on March 21, 1963, for taxes due, exclusive of penalty and interest, from decedent as follows: 1956, \$2407.28; 1957, \$3657.15; and Jan. 1, 1958, to Jan. 13, 1958, \$13,978.51. Other assessments were issued on the same date for taxes due (exclusive of penalty and interest) from the estate of the decedent as follows: Jan. 14, 1958, to Dec. 31, 1958, \$2922.57; 1959, \$3132.63.

(3) A penalty of 5% was also assessed by the same notices under Tax Law Section 376 (1) for all periods except 1956.

(4) These assessments were restated on Sept. 16, 1965, as follows (exclusive of penalty and interest): 1956, \$1832.26; 1957, \$3657.17; Jan. 1, 1958, to Jan. 13, 1958, \$13,978.51; Jan. 14, 1958, to Dec. 31, 1958, \$2922.57; 1959, \$2043.11.

(5) A 5% penalty under Sec. 376(1) was also restated on the same dates for periods including 1956 in the following amounts: 1956, \$91.61; 1957, \$182.86; Jan. 1, 1958, to Jan. 13, 1958, \$698.93; Jan. 14, 1958, to Dec. 31, 1958, \$146.13; 1959, \$102.16.

(6) The assessments were made on evidence that the decedent was a resident of New York State by virtue of maintaining an apartment as a permanent place of abode in New York State from 1956 until his death in 1958 and spending more than 183 days in the State in 1956 and 1957 and further that there was no evidence to rebut a presumption that decedent remained a New York domiciliary at the time of his death.

Upon the foregoing findings and all the evidence in the case, the State Tax Commission hereby

DETERMINES:

(A) The taxpayer voluntarily defaulted in this proceeding.

(B) The 5% penalties assessed for 1956, 1957, and for the period, Jan. 1, 1958, to Jan. 13, 1958, are contrary to the policy

of the Commission not to assert penalties against an estate by reason of the act or failure to act of the decedent. Otherwise, the assessments, as restated, do not include taxes or other charges which could not have been lawfully demanded.

(C) The demand for a hearing is dismissed and the assessments as restated in paragraph four and penalties of \$146.13 for the period, Jan. 14, 1958, to Dec. 31, 1958, and \$102.16 for the year 1959 are affirmed together with such additional charges, if any, as may be lawfully due under Sections 376 and 377 of the Tax Law.

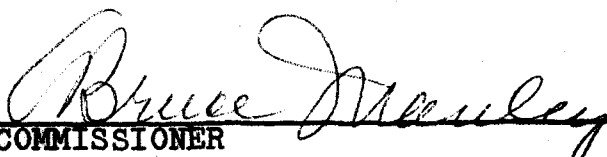
Dated: Albany, New York

STATE TAX COMMISSION

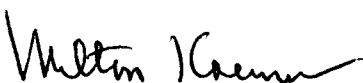
March 9th 1970



PRESIDENT



COMMISSIONER



COMMISSIONER