

STATE OF NEW YORK
STATE TAX COMMISSION

Cipton
P.I. - 1970

In the Matter of the Petition

of

A. Joseph Upton

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) 1955

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

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 20th day of November, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jacob

Goldstein (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jacob Goldstein

J. A. Robinson & Co.
590 Main Avenue
Passaic, New Jersey 07055
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

20th day of November, 1970.

Edward Rock

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

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age, and that on the 20th day of November, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon A. Joseph

Upton (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

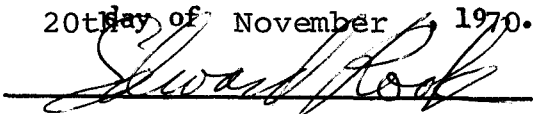
A. Joseph Upton
Old Ripple Camp Road
W. Patterson, New Jersey

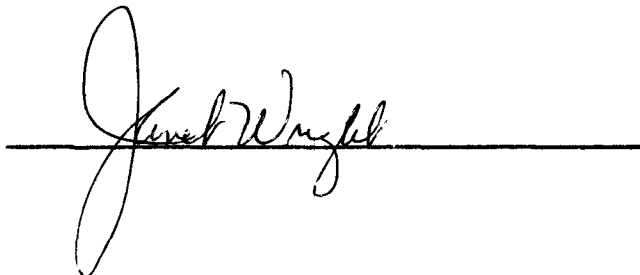
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of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

20th day of November, 1970.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
A. JOSEPH UPTON	:	DETERMINATION
for Revision or Refund of Personal	:	
Income Taxes under Article 16 of the	:	
Tax Law for the Year 1955	:	

The taxpayer having made application for a refund pursuant to Section 374 of the Tax Law by a claim for refund filed on September 3, 1965, and such claim having been denied and a hearing thereon having been demanded and duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The primary issue in this case is the timeliness of an application for a refund when it is filed within two years of the filing of the return and payment of the tax but where such return and such payment were made after an assessment was issued for the taxable year in question and where the assessment itself was three years after the return was due.
2. The claim for refund is in the amount of \$870.53.
3. The taxpayer failed to file a timely return for the year 1955. An assessment was issued on March 23, 1959, computing a tax on taxpayer, a New Jersey resident, on the basis of a distributive share of \$12,272.24 from a partnership, Turney and Upton, doing business in New York. A letter to taxpayer of the same date explained that the partnership did not maintain an office outside the state and had made no claim to an allocation of income to out-of-state

sources. No protest was ever made with respect to the partnership return or the unincorporated business tax.

4. In early 1964 a warrant was docketed against taxpayer in New York County, and taxpayer was informed that a failure to pay the amount then due (\$870.53) would result in collection efforts by the Attorney-General under a reciprocity agreement with New Jersey. The taxpayer testified that he thought, that a judgement had been docketed in New Jersey. In April 1964 the taxpayer paid the sum of \$870.53 on the assessment and stated his protest thereto.

5. On February 10, 1965, taxpayer filed a non-resident return for the year 1955 showing his own share of the partnership profits to be \$12,272.04 but then reduced that amount by 66.74%, the ratio of sales allegedly made outside of New York by the partnership divided by the total sales of the partnership. The result was a gross income of \$4081.69 and no tax liability.

6. A claim for refund was filed on September 3, 1965. Such claim was denied on November 24, 1965 as not timely filed. A demand was made on December 9, 1965, for a hearing.

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

DETERMINES:

A. The application for refund was not timely. Tax Law Section 374 provides that "if an assessment of tax shall have been made where no return was filed" then the limitations period is one year from such assessment. A "return" filed after such assessment cannot qualify as a return so as to make this language inapplicable since to do so would defeat the purpose of the statute.

B. The taxpayer has not carried the burden of proof that the assessment was in any way erroneous.

C. The assessment does not include taxes or other charges which could not have been lawfully demanded and the application for refund is denied.

DATED: Albany, New York
November 18, 1970

STATE TAX COMMISSION


COMMISSIONER

COMMISSIONER


COMMISSIONER