

STATE OF NEW YORK
STATE TAX COMMISSION

Ryback, Jack
Personal Income
Art. 16

1971

In the Matter of the Petition
of
JACK RYBACK
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 and 1956:

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

State of New York
County of Albany

Rae Zimmerman , 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 12th day of August , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Jack Ryback

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

Jack Ryback
161 East 35th Street
New York, New York

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
12th day of August , 1971.

Maitha Sunar

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK RYBACK

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 and 1956;

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

State of New York
County of Albany

Rae Zimmerman , 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 12th day of August , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Emanuel W. Staff, C.P.A.

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

Emanuel W. Staff, C.P.A.
c/o Abrams, Meresman & Co.
545 Madison Avenue

and by depositing same enclosed in a ^{New York, New York} 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

12th day of August , 1971.

Maitha Furnaro

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application of
JACK RYBACK

For Revision or Refund of Personal
Income Taxes under Article 16 of the
Tax Law for the Years 1955 and 1956

DETERMINATION

The taxpayer herein having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1955 and 1956 and hearings having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y., on the 18th day of September, 1964, the 12th day of May, 1965 and the 23rd day of September, 1956, before Solomon Sies, hearing officer of the Department of Taxation and Finance and the taxpayer, Jack Ryback, having appeared personally and having been represented by Abrams, Meresman and Co., C.P.A.'s by Emanuel F. Staff, Esq., testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Jack Ryback, filed a personal income tax return for the year 1955; that he reported compensation before deductions in the sum of \$28,600; that in addition he also reported net income on rental property in the sum of \$1,549.64 after deducting legal fees in the sum of \$1,200.00; that he deducted from normal income "expenses in connection with the leasehold of mine, Oriente, Cuba" in the sum of \$9,900.00; that he also deducted the sum of \$779.29 for a hotel and plane trip to Miami, Florida as a medical expense; that the taxpayer claimed credit for five dependents, 2 nieces under 18 years of age, a son in full time attendance in college, a daughter-in-law "incapable of self-support" over 18 years of age and a grandchild; that on April 14th, 1959 the Department of Taxation and Finance

made an additional assessment against the taxpayer (Assessment #B 586800) for the year 1955 disallowing the deduction claimed for expenses in connection with the leasehold of mine, legal fees and the cost of a trip to Florida as a medical expense and further disallowing the dependency credit for the taxpayer's daughter-in-law upon the ground that since she was over 18 years of age and neither mentally nor physically incapacitated she could not be claimed as a dependent.

(2) That the taxpayer filed a personal income tax return for the year 1956 in which he claimed a deduction of \$2,400 for excludable "sick pay"; that on September 11, 1959, the Department of Taxation and Finance made an additional assessment against the taxpayer for the year 1956 (Assessment #B 660700) disallowing the amount claimed for sick pay based upon the failure of the taxpayer to submit evidence of a plan of his employers covering him for a period of sickness or personal injury; that subsequent to the hearing the taxpayer's representative submitted a certificate of insurance of Continental Casualty Co. issued April 1st, 1955, covering the taxpayer for accident by injury, or sickness for benefits of 2/3 of its pay maximum of \$6,000; that in addition to the payments received by the taxpayer from the three employer corporations (of which he was the sole stockholder) during the period of his illness from April 5, 1956 to May 6, 1956, he also received benefits from the above-mentioned insurance company during said period of illness; that he failed to report the amount so received from said insurance company on his income tax return; that the taxpayer has failed to establish that the amounts received by him as an employee were paid to him under a health or disability plan maintained or financed by his employers and requiring such payments to be made by said employers which are excludable from gross income in accordance with the provisions of Section 359, subdivision 2, paragraph e of the Tax Law, prior to its amendment by

Chapter 1048 of the Laws of 1957, applicable to tax years commencing January 1st, 1957 and Article 23 of the Income Tax Regulations, then in effect; that the payments made to the taxpayer as an employee on account of sickness were voluntarily made; that there was no enforceable obligation on the part of said employers to make the same.

(3) That the taxpayer had been in the process of negotiating for the leasehold of certain mines in Cuba since 1949 with the owner of the concessions of said mines; that on January 12th, 1952, an agreement was entered into between J. Ryback Incorporated and Jack Ryback, President and a Mr. Garcia the owner of "2 concessions of chrome minerals and other minerals from the third section, called 'Ores Mine' and 'Le Fe Mine' the property of United Sugar Company" both located in the Province of Oriente, Cuba, to lease to the corporation the concessions for a period of 99 years; that the taxpayer used the name of the corporation of which he was a sole stockholder as a conduit in order to enter into these negotiations (Minutes of Hearing, page 23); that the expenditures were alleged to have been made between 1949 and 1955 (Minutes of Hearing page 24); that the lease for the mine was never consummated because of the failure to secure the necessary approval from President Batista due to the unrest in Cuba at that time; that, in addition, the taxpayer has failed to submit any evidence to substantiate the fact that he paid or incurred any expenses in 1955 in connection with the aforementioned mines and has also failed to indicate the exact nature of the alleged expenditures in connection therewith; that the Internal Revenue Service after final audit of taxpayer's Federal return for 1955 disallowed contribution, \$300.00, business expenses, \$600.00, expenses in connection with leasehold, \$1000.00, total disallowance \$1660.00; that the taxpayer filed an IT-115 on March 25th, 1965 and paid the additional tax due in the sum of \$116.20.

(4) That although Section 616 (a) of the Internal Revenue Code permits a deduction for expenses paid or incurred during the taxable year for the development of a mine or other natural deposits other than an oil or gas well and Section 616 (b) permits the taxpayer to elect to treat such expenses as deferred expenses on a rateable basis, there is no similar provision contained in Article 16 of the Tax Law.

(5) That the taxpayer is the owner of a brick building located at 161 East 35th Street, New York City, which he leases to J. Ryback Incorporated as tenant and reports the rental income on Schedule B of his income tax returns; that in 1954, the adjoining owner constructed a new building and started excavating and blasting as a result of which the taxpayer sustained damage to the building owned by him; that the taxpayer submitted evidence to the effect that he had paid legal fees in the sum of \$1,200 in 1955 in connection with a contemplated legal action against the adjoining property owner; that the taxpayer subsequently commenced an action and recovered a judgment in the sum of \$6,000; that the amount necessary to repair the damage sustained exceed the amount of recovery; that the taxpayer is entitled to a deduction in 1955 for legal fees in connection with his income producing property.

(6) That the taxpayer submitted evidence to the effect that he sustained a back injury in Miami, Florida as a result of which he was confined to St. Francis Hospital in Miami, Florida April 17, 1955, for a period of six days; that he then returned to New York and was advised by his doctors to return to St. Francis Hospital in Florida for further treatment; that he was readmitted to the aforesaid hospital on April 16, 1955 where he remained for about six days; that the taxpayer is entitled to claim a deduction for hotel and plane trip to Miami as a medical expense.

(7) That Subdivision 2, Section 362 of the Tax Law, prior to its amendment in 1956, provided for dependency credit if the dependent person was under 18 years of age or was "incapable of self-support because mentally or physically defective or was over 18 years of age and in full time attendance at an approved school or college"; that the taxpayer's daughter-in-law over 18 years of age was neither physically nor mentally defective during the year 1955; that she was unable to work because she had to care for her infant child.

Based upon the aforementioned findings and all of the evidence produced herein the State Tax Commission hereby

DETERMINES:

(A) That the deduction of expense during the year 1955 in connection with leasehold of mines was not a proper deduction in accordance with the provisions of Section 360 of the Tax Law as more fully set forth in Findings (3) and (4) above.

(B) That the taxpayer could not claim his daughter-in-law as a dependent during the year 1955 as more fully set forth in Finding (7) above, in accordance with the provisions of sub-division 2, Section 362 of the Tax Law prior to its amendment in 1956.

(C) That the taxpayer was entitled to a deduction for legal expenses, as more fully set forth in Finding (5) above; that the taxpayer was entitled to claim a deduction for hotel and plane trip to Miami as a medical expense in accordance with Finding (6) above. That the payments made to the taxpayer by his employers during the year 1956 were voluntarily made and did not constitute amounts received through accident or health insurance excludable from gross income in accordance with the provisions of Section 359, subdivision 2-e of the Tax Law prior to its amendment in 1957 and Article 23 of the Income Tax Regulations then in effect.

(D) That by reason of Determinations (A), (B) and (C) above, the assessment for the year 1955 is hereby modified and re-computed as follows:

Balance reported at Item 35		\$23,929.64	
Disallowed expense in connection with leasehold of mines		<u>9,900.00</u>	
		\$33,829.64	
Disallowance on Federal audit		<u>1,660.00</u>	
Adjusted balance		\$35,489.64	
Medical expense reported	\$2,772.81		
Less 5% adjusted balance	<u>1,774.82</u>		
Medical expense deductible		<u>997.99</u>	
Personal exemption allowed		\$34,491.65	
Adjusted taxable balance		<u>4,100.00</u>	
Taxable balance reported		\$30,391.65	
Additional income subject to tax		<u>17,929.64</u>	
" normal tax at 7%		\$12,462.01	
Less credit (Paid with IT 115)			\$872.34
Net additional normal tax due			<u>116.20</u>
			\$756.14

(E) That, accordingly, the assessment for the year 1955, (Assessment #B 586800) except as modified in accordance with Determination (D) above, is correct; that said assessment, except as herein modified, does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund filed with respect thereto, except as herein modified, is hereby denied; that the assessment for the year 1956 (Assessment #B 660700) is correct; that said assessment does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund filed with respect thereto be and the same is hereby denied.

Dated, Albany, New York, on the 12th day of August 1971.

STATE TAX COMMISSION

Norm Gallman

President

Bruce Manley

Commissioner

Milton Koenig

Commissioner

Commissioner Gallman

Mr. Rook

Jack Ryback, Application for revision or refund

Your memorandum of August 10, 1971, asks where this determination has been "all this time". The hearing herein was held September 18, 1964. This case was among the 300 odd cases which were sent to me by the Law Bureau about a year ago. We have processed all but about 50 of them. In this particular case, the determination had been written, but not approved by the several people in the Law Bureau who were in charge of review. When we reached this case, one of my lawyers reviewed and approved and I endorsed the approval after a cursory review. I do not know the reason for the prior delay and I doubt if we could obtain anything further from the Law Bureau.

EDWARD ROOK

August 11, 1971

MEMORANDUM

NORMAN GALLMAN
ACTING COMMISSIONER OF
TAXATION AND FINANCE

STATE OF NEW YORK
DEPARTMENT OF
TAXATION AND FINANCE

Mr. Rook,

Will you please let me know where
this has been all this time.

NFG--8/10/71

