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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL A. SEAVER

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) 1957 & 1959 :

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

State of New York
County of Albany

Martha Funaro , 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 21st day of August , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Samuel A. Seaver

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

Samuel A. Seaver
857 Fifth Avenue
New York, New York 10021

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

21st day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAMUEL A. SEAVER

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Tax Law for the (Year(s) 1957 & 1959

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State of New York
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Martha Funaro , 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 21st day of August , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Harry Rebell, 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: Harry Rebell, C.P.A.
19 Rector Street
New York, New York 10006

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

21st day of August , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 21, 1972

Samuel A. Seaver
857 Fifth Avenue
New York, New York 10021

Dear Mr. Seaver:

Please take notice of the **DETERMINATION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 375**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 Days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Applications :
of :
SAMUEL A. SEAVER : DETERMINATION
for Revision or for Refund of Personal :
Income Taxes under Article 16 of the :
Tax Law for the Years 1957 and 1959. :

Applicant, Samuel A. Seaver, has filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1957 and 1959. A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on December 16, 1971, at 9:15 A.M. Applicant appeared by Harry Rebell, C.P.A. and by Morris Cohen, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Were applicant, Samuel Seaver's claims for refund of personal income taxes for the years 1957 and 1959 timely filed?

FINDINGS OF FACT

1. On September 27, 1967, applicants, Samuel A. Seaver and Beatrice Seaver, executed and filed with the Internal Revenue Service Form 2297 "Waiver of Statutory Notification of Claim Disallowance" in connection with the taxable years 1957 through 1960. Simultaneously they filed Internal Revenue Service Form 870-AD "Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment" in connection with the taxable years 1957 through 1959. They offered therein to accept, as correct, overassessments of \$5,591.99 for the year 1957 and \$2,065.87 for the year 1959.

2. On or about October 23, 1967, they received from the Internal Revenue Service Form L-85, wherein they were advised that their account for the years 1957 through 1960 would be adjusted in accordance with the agreement contained in Form 870-AD and that a refund would be made. They were also advised that since they had filed Form 2297 they would not receive official notice of disallowance of a portion of their claim for refund.

3. On May 6, 1968, applicant, Samuel A. Seaver, filed with the Income Tax Bureau, applications for revision or refund of personal income taxes for the years 1957 and 1959. Attached to said applications were Forms IT-115 "Notice of Change in Taxable Income by United States Treasury Department Pursuant to Section 367 and 659 of the New York State Tax Law". He requested refunds for said years on all of said forms. Also attached to said applications were copies of Internal Revenue Service Forms L-85, 870-AD and 2297 previously referred to.

4. On July 18, 1968, the Income Tax Bureau denied applicant, Samuel Seaver's claims for refunds for the years 1957 and 1959 upon the grounds that the claims for refund were not timely filed.

CONCLUSIONS OF LAW

A. That the execution of Form 870-AD on September 27, 1967, by petitioners, Samuel A. Seaver and Beatrice Seaver, wherein they waived restrictions on the time for assessment and agreed not to seek a refund other than for the amount of overassessment shown for the years 1957, 1958 and 1959, and the acceptance thereof by the Internal Revenue Service on October 23, 1967, did not constitute a closing agreement in accordance with section 7121 of the 1954 Internal Revenue Code. They had the right to maintain an action for an additional refund in spite of their agreement with the Internal Revenue Service. They were not equitably estopped from maintaining such an action. Uinta Livestock Corp. v. United States

of America 355 F. 2d 761, 66-1 USTC 9193 (10th Cir, 1966). Their time to commence such an action would not have expired until September 27, 1969, pursuant to Internal Revenue Service Form 2297 filed simultaneously with Form 870-AD. Therefore, on May 6, 1968, when petitioner Samuel Seaver filed IT-115's and applications for refund of New York State personal income tax for the years 1957 and 1959 there had been no "final determination" of their federal taxable income for said years in existence in accordance with the meaning and intent of section 367(2) of the Tax Law, and thus his refund claims were timely filed.

B. That the application of Samuel A. Seaver is granted to the extent of determining that his refund claims for the years 1957 and 1959 were timely filed and the case is remanded to the Income Tax Bureau for consideration of his substantative claims.

DATED: Albany, New York
August 21, 1972

STATE TAX COMMISSION

Norman Sullivan
COMMISSIONER

Beuce Mauley
COMMISSIONER

Milton Korman
COMMISSIONER