

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED ROTHAUER & HELEN ROTHAUER

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) 22 of the
Tax Law for the Year(s) 1968

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 30th day of October , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Alfred & Helen Rothauer ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Alfred Rothauer
854A Thornhill Court
Lakewood, New Jersey 08701

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 October , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

October 30, 1974

Mr. & Mrs. Alfred Rothauser
854A Thornhill Court
Lakewood, New Jersey 08701

Dear Mr. & Mrs. Rothauser:

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

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| ALFRED ROTHAUER and HELEN ROTHAUER | : | DECISION |
| for Redetermination of Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Year | : | |
| 1968. | : | |
| | : | |

Petitioners, Alfred Rothauser and Helen Rothauser, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 0-69212628). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on July 15, 1974, at 1:30 P.M. Petitioner, Alfred Rothauser, appeared pro se and for his wife, Helen Rothauser. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Did petitioners, Alfred Rothauser and Helen Rothauser, have reasonable cause for failing to timely file a New York State income tax nonresident return for the year 1968 and if not, what was the proper basis for computing the amount of the penalty to be assessed pursuant to section 685(a) of the Tax Law?

FINDINGS OF FACT

1. Petitioners, Alfred Rothauser and Helen Rothauser, filed a New York State income tax nonresident return for the year 1968. The return was mailed by the taxpayer in the beginning of November, 1969 and was received by the Income Tax Bureau on November 5, 1969. It indicated a tax due of \$4,460.90. Payment of said sum was received by the Income Tax Bureau on March 27, 1970.

2. On June 28, 1971, petitioners, Alfred Rothauser and Helen Rothauser, filed a claim for credit or refund of Personal income tax paid for the year 1968 in the sum of \$4,460.90 based on a net operating loss carryback from the year 1970.

3. On January 5, 1972, the Income Tax Bureau issued a Voucher for Income Tax Refund to petitioners, Alfred Rothauser and Helen Rothauser, in the sum of \$5,907.40 plus \$18.96 interest or a total sum of \$5,926.36. It allowed, in full, claims for refunds based on net operating loss carryback from the year 1970 to the years 1967 and 1969. It, however, imposed a penalty pursuant to section 685(a) of the Tax Law for late filing of their 1968 return and reduced the refund due for said year by the amount of said penalty. It computed the penalty as 25% of \$5,711.26, or the sum of \$1,427.82, which when deducted from the sum paid for said year of \$4,460.90 resulted in a net refund of \$3,033.08. In accordance with the aforesaid voucher, it issued

a notice of partial disallowance for the year 1968 in the sum of \$1,427.82. There is no evidence in the record to indicate how the sum of \$5,711.26 was arrived at by the Income Tax Bureau or that it ever redetermined the amount of tax claimed to be due by petitioners on their return for the year 1968.

4. Petitioners, Alfred Rothauser and Helen Rothauser's New York State nonresident income tax returns for the years 1965, 1966 and 1967, were filed late by their accountant. They were only filed after notification by the Income Tax Bureau on January 16, 1969 that their tax liability for said years would be computed on the basis of information available if returns were not filed. Petitioners and their accountant were aware on April 15, 1969, that they were required to file a New York State income tax nonresident return for the year 1968.

CONCLUSIONS OF LAW

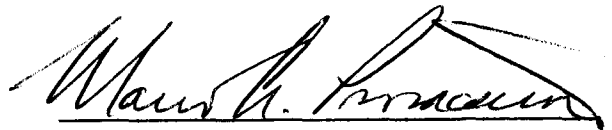
A. That petitioners, Alfred Rothauser and Helen Rothauser, did not have reasonable cause for failing to timely file a New York State income tax nonresident return for the year 1968 and, therefore, they were subject to a 25% penalty pursuant to section 685(a) of the Tax Law. Even though the original tax was eliminated by the carryback of a net operating loss, this does not eliminate the penalty for failure to file the return for

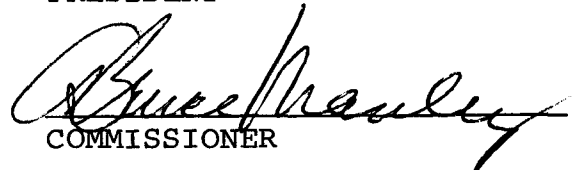
the earlier year within the prescribed time, at the rate of 25% of the tax that would have been due without regard to the carryback. C.V.L. Corp. 17 TC 812, Dec. 18,628; Texas Mobile Home Association, 21 TCM 510, Dec. 25,467(M), TC Memo 1962-95. However, the penalty should be computed upon the sum of \$4,460.90 the amount of tax due as shown on the return, as a redetermination of the tax for said year was not made by the Income Tax Bureau.

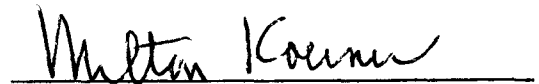
B. That the petition of Alfred Rothauser and Helen Rothauser is granted to the extent of reducing the penalty imposed for the year 1968 pursuant to section 685(a) of the Tax Law from \$1,427.82 to \$1,115.25; that the Income Tax Bureau is hereby directed to refund the additional sum of \$312.57, together with such interest as may be lawfully owing, and; that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 30, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER