

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JEROME RASKIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(a)~~ 22 of the :
Tax Law for the Year ~~(xxxxxx)~~ 1970.:

State of New York
County of Albany

Carmen Mottolese , 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 1st day of October , 1976 , she served the within
Notice of Decision by (certified) mail upon Jerome Raskin

~~(representative of the)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Jerome Raskin
440 East 79th Street
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~xxxxxx~~ 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

1st day of October , 1976

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JEROME RASKIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (2) 22 of the :
Tax Law for the Year (~~XXXXXX~~) 1970.:

State of New York
County of Albany

Carmen Mottolese, 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 1st day of October, 1976, she served the within Notice of Decision by (certified) mail upon Julius A. Baylis, 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: Julius A. Baylis, C.P.A.
1457 Broadway
New York, New York 10036

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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

1st day of October, 1976

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

October 1, 1976

TELEPHONE: (518) 457-3850

Mr. Jerome Raskin
440 East 79th Street
New York, New York 10021

Dear Mr. Raskin:

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

Please take further notice that pursuant to
Section(~~8~~) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,
Frank J. Puccia
Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JEROME RASKIN : DECISION
for a Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1970. :

Petitioner, Jerome Raskin, 440 East 79th Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970 (File #0-58986921). A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer at the offices of the State Tax Commission, 2 World Trade Center, New York, New York on June 9, 1976 at 10:45 A.M. Petitioner appeared by Julius A. Baylis, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUES

I. Were the payments made by petitioner, Jerome Raskin, in 1970 for support and maintenance of his former wife, Marjorie Hoffman Raskin, deemed alimony mandated by a decree of divorce or written separation agreement?

II. Was taxpayer's deduction of \$1,000.00 for long term capital losses allowable since he was a married taxpayer filing a separate return?

FINDINGS OF FACT

1. Petitioner, Jerome Raskin, timely filed an individual New York State income tax return for the year 1970. Among the items contained therein was a \$1,000.00 deduction for long term capital losses and a deduction of \$12,000.00 representing support and maintenance payments to his former wife.

2. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against the petitioner, Jerome Raskin, imposing additional personal income tax for the year 1970 upon the grounds that a married taxpayer filing a separate return is limited to a maximum deduction of \$500.00 for long term capital losses. This disallowance was not disputed by the petitioner.

3. The Statement of Audit Changes and the Notice of Deficiency also imposed additional income tax for the year 1970, upon the grounds that the deduction for support and maintenance paid to his former wife, Marjorie Hoffman Raskin, was not paid pursuant to a decree of divorce or a written agreement.

4. In 1969, petitioner obtained a divorce from his wife in Mexico. No reference was made in the decree indicating or mandating payments to his former wife.

5. On December 19, 1969, petitioner was the defendant in an action brought by his former wife, Marjorie Raskin, for "temporary alimony, child support, custody, exclusive occupancy of the marital residence and counsel fees."

6. The judge's decision indicated that "in view of the defendant's commitment to continue to pay to the plaintiff the sum of \$1,000.00 per month... the Court will make no order or direction for alimony or support pendente lite."

7. The reference to future litigation in paragraph 6 enumerated above, was clarified by the submission of evidence indicating that on October 11, 1972 a written agreement was reached which spelled out the terms and amounts of mandated payments by petitioner, Jerome Raskin, for support and maintenance of his former wife, Marjorie Hoffman Raskin.

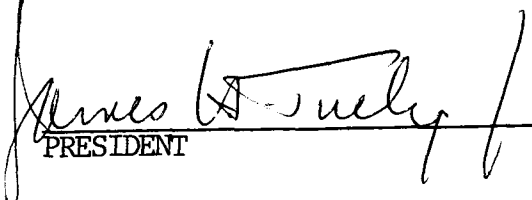
CONCLUSIONS OF LAW

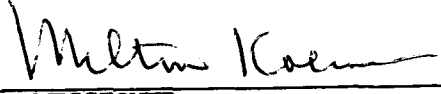
A. That the payments made by petitioner to his former wife were not made pursuant to a written agreement or decree of divorce, as required under sections 71(a) and 215(a) of the Internal Revenue Code.

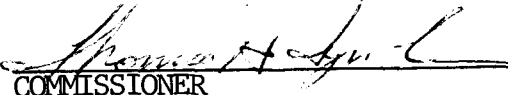
B. That the petition of Jerome Raskin is denied and the Notice of Deficiency issued January 29, 1973 is sustained.

DATED: Albany, New York
October 1, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER