

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED F. ZISSLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income and :
Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~xxPeriod(s)~~ 1960, :
1961, 1962, 1963, 1964 and 1965.

State of New York
County of Albany

Catherine Steele, 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 14th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Alfred F. Zissler

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Alfred F. Zissler
9 Creekside Lane
Rochester, New York 14618

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)~~ ~~xxof 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
14th day of September, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 ALFRED F. ZISSLER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1960, 1961, 1962, 1963, 1964 :
and 1965.

Petitioner, Alfred F. Zissler, residing at 9 Creekside Lane, Rochester, New York, has filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1960, 1961, 1962, 1963, 1964 and 1965. (File No. 9-49211308).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on April 16, 1975, at 10:00 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Max Kuperman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Whether fraud penalties should be imposed against petitioner, Alfred F. Zissler, for failure to timely file his New York State income and unincorporated business tax returns for the years 1960, 1961, 1962, 1963 and 1964?

II. Whether petitioner, Alfred F. Zissler, timely filed a claim for credit or refund of an overpayment of his 1965 New York State income tax?

FINDINGS OF FACT

1. On January 21, 1970, petitioner, Alfred F. Zissler, filed New York State personal income and unincorporated business tax returns for the years 1960, 1961, 1962, 1963, 1964 and 1965.

2. On August 16, 1971, a Notice and Demand was issued by the Income Tax Bureau to reflect the disallowance of credit for overpayment of withholding tax on petitioner's 1965 income tax return. The credit was not allowed because the 1965 return was not timely filed.

3. On September 25, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Alfred F. Zissler, imposing fraud penalties under Section 685(e) of the Tax Law. A Notice of Deficiency in the amount of \$3,520.39 was accordingly issued. On August 26, 1974, the Income Tax Bureau, by letter, revised the Notice of Deficiency to change the incorrect assessment of interest on the original notice.

4. Petitioner, Alfred F. Zissler, graduated from Iowa State University in 1932 with a degree in electrical engineering. He was a manufacturer's representative for Peerless Electric Company of Warren, Ohio, until 1952 when he moved to Rochester, New York. Since 1953 he has worked as a manufacturer's representative on a split-commission arrangement with two other manufacturer's representatives in a joint venture. In 1965 they formed a corporation to carry on the business.

5. From 1956 to 1964 petitioner, Alfred F. Zissler, failed to file Federal and New York State income tax returns and New York State unincorporated business tax returns.

6. Petitioner, Alfred F. Zissler, pleaded guilty on February 24, 1969, to one count of willfully and knowingly failing to file Federal income tax returns for the year 1964 in violation of Title 26, U.S.C. Section 7203. He was sentenced to one year in prison, which sentence was suspended and he was placed on probation for one year and fined \$2,000.00. At the time of his sentencing two other counts in an indictment, alleging that he willfully failed to file Federal income tax returns for the years 1962 and 1963, were dropped.

7. Alice M. Zissler, petitioner's wife, was ill for most of the period in issue. Petitioner was extremely concerned about his wife's health and attempted to keep from her the knowledge of financial problems that he was experiencing. He did not file tax returns for some of the years in issue because he did not have the funds available to pay the taxes owed.

8. The 1965 New York State income tax return of petitioner, Alfred F. Zissler, filed January, 1970, reflected an overpayment of New York State withholding tax in the amount of \$4,447.13.

CONCLUSIONS OF LAW

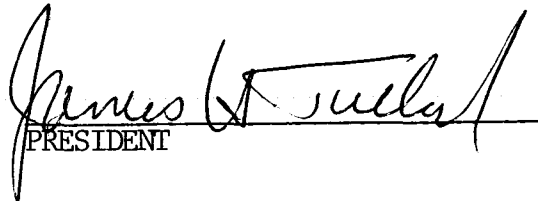
A. That petitioner, Alfred F. Zissler, is liable for the penalty imposed for fraud for failure to timely file New York State income and unincorporated business tax returns for the years 1960, 1961, 1962, 1963 and 1964 in accordance with the meaning and intent of section 685(e) of the Tax Law. The illness of petitioner, Alfred F. Zissler's wife, his financial problems, and his lack of funds to pay taxes due are not sufficient reasons to excuse the penalties assessed against him.

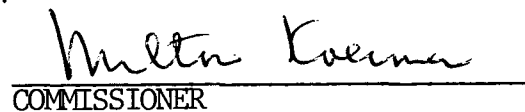
B. That petitioner, Alfred F. Zissler's claim for a refund of income tax withheld during 1965 would have to be received within the three-year period beginning April 15, 1966, the date on which a 1965 income tax return would have been due. (Petition of J.F. Baxter, Jr., Decision of the State Tax Commission, August 18, 1974). Since the request for refund was not timely filed, petitioner may not claim credit for overpayment of withholding tax for the year 1965 in accordance with the meaning and intent of section 687(a) of the Tax Law.

C. That the petition of Alfred F. Zissler is denied.

DATED: Albany, New York
September 14, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER