

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS LEVY and JEAN LEVY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~xxx Period(x)~~
1965, 1966 and 1967

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Morris Levy ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Morris Levy
R.D.
Ghent, 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 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

16 day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Jean Levy ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Jean Levy
130 East 67th 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~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
16 day of August, 1977.

Marsina Donnini

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STATE TAX COMMISSION

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Tax Law for the Year(s) ~~xxxxxx~~ ~~xxxxxx~~ :
1965, 1966 and 1967

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Howard I. Comart, CPA

(representative of) the petitioner in the within proceeding,

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

as follows: Howard I. Comart, CPA
11 Park Place
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 Postal Service within the State of New York.

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Sworn to before me this

16 day of August, 1977.

Marsina Donnini

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STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

**Mr. Morris Levy
R. D.
Ghent, New York**

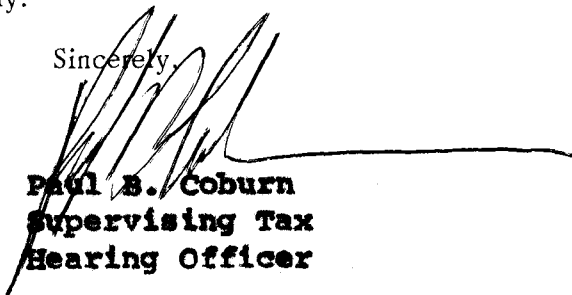
Dear Mr. Levy:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690 & 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
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THOMAS H. LYNCH

August 16, 1977

**Mrs. Jean Levy
130 East 67th Street
New York, New York**

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Sincerely,

**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
MORRIS LEVY and JEAN LEVY : 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 1965, 1966 and 1967. :
:

Petitioners, Morris Levy and Jean Levy, R.D. Ghent, Columbia County, New York, filed petitions 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 1965, 1966 and 1967. (File No. 00304)

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 9, 1976 at 9:15 a.m. The petitioners appeared by Howard I. Comart, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUES

I. Whether days worked outside New York State by petitioner, Morris Levy, were allocable to sources outside New York State for the years 1965, 1966 and 1967.

II. Whether income in 1965, 1966 and 1967 from purchases of songwriter's copyrights by petitioner, Morris Levy, resulted from investments made while petitioner was a nonresident of New York State, thereby exempting said income from New York State personal income tax within the meaning and intent of section 632(d) of the Tax Law.

III. Whether the income in 1965, 1966 and 1967 derived from the purchases by petitioner, Morris Levy, of songwriter's copyrights, was subject to the unincorporated business tax within the meaning and intent of section 703(d) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Morris Levy, filed a New York State non-resident income tax return for the period May 17, 1965 through December 31, 1965, and also filed a New York State resident income tax return for the period January 1, 1965 through May 16, 1965. He listed \$29,475.00 as wages reported on his Federal return for 1965, and attributed \$10,982.39 of this to his period of residence in New York State. Further, he listed \$18,447.09 in royalty income for his Federal return, and attributed \$468.09

of it to his period of residence in New York State. He did not file a New York State unincorporated business tax return for 1965.

2. Petitioners, Morris Levy and Jean Levy, filed a New York State nonresident income tax return for the year 1966. They listed \$32,700.00 in wages for Morris Levy for their Federal return, while allocating \$30,548.68 of this to New York State by deducting 15 workdays of 228 total workdays as days worked outside New York State. They also listed \$21,078.75 in pensions and annuities, royalties and rents, partnerships and estates or trusts for Federal purposes, and attributed none of it to New York State. They did not file a New York State unincorporated business tax return for 1966.

3. Petitioners, Morris Levy and Jean Levy, filed a New York State nonresident income tax return for the year 1967. They listed \$39,700.00 as wages reported on their Federal return, while attributing \$29,343.46 of it to New York State by deducting 60 workdays of 230 total workdays as days worked outside New York State. They also listed \$27,934.06 in pensions and annuities, rents and royalties, partnerships and estates or trusts for Federal purposes, and attributed none of it to New York State. They

did not file a New York State unincorporated business tax return for the year 1967.

4. On June 4, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Morris Levy, imposing additional personal income tax for the years 1965 and 1966, consisting of a deficiency of \$1,578.10, plus \$297.12 in interest for 1965, and a deficiency of \$1,720.31, plus a penalty of \$86.02 with \$220.68 in interest for the year 1966. The impositions were made upon the grounds that petitioner had not established that royalty income was properly excludable from his nonresident returns. Also, income allocation on the 1966 return was disallowed as unsubstantiated, and adjustments were made per Federal audit. Finally, a penalty was imposed pursuant to section 685(a) of the Tax Law for late filing of the 1966 New York State income tax return. Accordingly, a Notice of Deficiency was issued totalling \$3,902.23.

5. On June 4, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Morris Levy and Jean Levy, imposing additional personal income tax for the year 1967, consisting of a deficiency of \$2,855.07, plus \$194.94 in interest, upon the grounds that they had not established that their royalty

income was properly excludable from their New York State non-resident income tax return, and that their allocation of income was disallowed as unsubstantiated. Accordingly, a Notice of Deficiency was issued totalling \$3,050.01.

6. On November 29, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Morris Levy, imposing unincorporated business tax for the years 1965, 1966 and 1967, consisting of deficiencies of \$390.31, plus \$133.47 in interest and \$474.52, plus \$133.80 in interest and \$717.36, plus \$159.23 in interest, respectively. The Statement of Audit Changes was based upon the grounds that royalty income was held to be income from petitioner's activities as an independent agent who buys copyrights to songs and promotes them for the purposes of earning royalty income. Accordingly, a Notice of Deficiency was issued totalling \$2,008.69.

7. Petitioner, Morris Levy, was a resident of New York State for the period January 1, 1965 through May 16, 1965, and was a resident of New Jersey for the rest of the period in issue.

8. Petitioner, Morris Levy, was employed as an executive of Roulette Records, Inc. of New York, New York, and various other New York State corporations during all the years in issue.

9. Petitioner, Morris Levy, offered no documentary or other substantial evidence for the allocation of his wage income for the years in issue.

10. Petitioner, Morris Levy, purchased and promoted writers' copyrights in the musical field. These were not isolated or incidental transactions. The royalty income from these purchases was substantial in each of the years in issue. Further, there was no documentary or other substantial evidence offered that any of these transactions took place while the petitioner was not a resident of New York State.

11. Petitioner, Morris Levy, did not maintain a regular place of business outside of New York State during the years in issue.

CONCLUSIONS OF LAW

A. That petitioner, Morris Levy's purchases of songwriter's copyrights constituted the carrying on of an unincorporated business and the income from these purchases was not investment income and was not produced by isolated or incidental transactions within the meaning and intent of section 703(d) of the Tax Law.

B. That, since petitioner, Morris Levy, had no regular place of business outside New York State during the years in issue, all of the income attributable to the activities subjected

to unincorporated business tax in Conclusion of Law "A", supra, was allocable to New York State during the years 1965, 1966 and 1967 within the meaning and intent of section 707(a) of the Tax Law.

C. That, since all of the income from petitioner, Morris Levy's purchases of songwriter's copyrights was subject to New York State unincorporated business tax in the years 1965, 1966 and 1967, therefore, said income was from New York State sources and was includible in the personal income tax of petitioners, Morris Levy and Jean Levy, in said years in accordance with the meaning and intent of section 632(b)(1)(B) of the Tax Law.

D. That, since petitioner, Morris Levy, did not substantiate claimed days worked outside New York State in 1965, 1966 and 1967, therefore, all workdays were allocable to New York State in said years.

E. That the petitions of Morris Levy and Jean Levy are denied and the notices of deficiency issued June 4, 1969 and November 29, 1971 are sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER