

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS ADELSBERG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971, 1972 and 1973.

State of New York
County of Albany

John Huhn , 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 25th day of August , 19 78, ~~she~~ served the within
Notice of Decision by (certified) mail upon Morris Adelsberg

(~~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 Adelsberg
144 East 36th Street, Apt. 9-C
New York, New York 10016

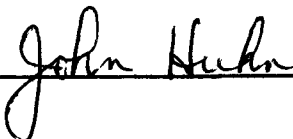
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 19 78







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 25, 1978

Mr. Morris Adelsberg
144 East 36th Street, Apt. 9-C
New York, New York 10016

Dear Mr. Adelsberg:

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 **(2) 690** 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,

Joseph Chyrywaty
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MORRIS ADELSBERG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1971, 1972	:	
and 1973.	:	

Petitioner, Morris Adelsberg, 144 East 36th Street, Apt. 9-C, New York, New York 10016, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971, 1972 and 1973 (File No. 13055).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 18, 1977 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether New York City unincorporated business tax paid by petitioner was deductible in computing New York State personal income tax.

FINDINGS OF FACT

1. Petitioner timely filed New York State personal income tax returns for 1971, 1972 and 1973. In arriving at his New York City adjusted gross income, he did not increase his Federal adjusted gross income by his distributive share of New York City unincorporated business tax paid by a partnership of which he was a member, and which had been deducted for Federal income tax purposes.

2. The Income Tax Bureau contended that the New York City unincorporated business tax which was deducted to arrive at Federal adjusted gross income was not similarly deductible in computing New York State personal income tax, but was required to be added to his Federal adjusted gross income in arriving at his New York adjusted gross income. Accordingly, it issued a Notice of Deficiency on February 24, 1975 in the amount of \$415.41 in personal income tax, plus \$50.75 in interest, for a total due of \$466.16.

3. Petitioner contended that in accordance with section 706(4) of Article 23 of the Tax Law, New York City unincorporated business tax was specifically exempt (as an income tax) from the requirement that it be added back to income.

CONCLUSIONS OF LAW

A. That New York City unincorporated business tax is identified as a deductible income tax in accordance with section 706(4) of Article 23 of the Tax Law, which refers to computation of New York State unincorporated business tax. For purposes of personal income tax, Article 22 applies, which article requires a modification increasing Federal income by adding back income taxes imposed by this or any other state or taxing jurisdiction; therefore, New York City unincorporated business tax was not deductible in computing New York State personal income tax in accordance with the meaning and intent of sections 612(b)(3) and 615 (c)(1) of the Tax Law.

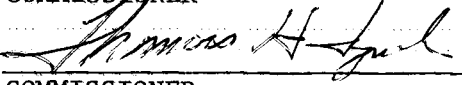
B. That the petition of Morris Adelsberg is denied and the Notice of Deficiency issued February 24, 1975 is sustained.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER