

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR APPELBAUM

and

FLORENCE APPELBAUM (DECEASED)

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (9) 22 of the
Tax Law for the Year ~~(3X) or Period(s)~~ 1973

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AFFIDAVIT OF MAILING

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 6th day of February, 19 78, she served the within

Notice of Decision by (certified) mail upon Seymour Appelbaum
&
Florence Appelbaum (Deceased)

(representative of) the petitioner in the within proceeding,

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

as follows: Seymour Appelbaum
&

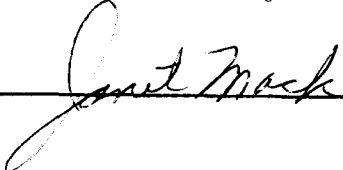
Florence Appelbaum (Deceased)
Unit 748B, Heritage Village
Southbury, Connecticut

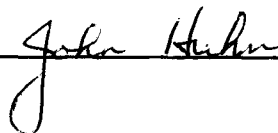
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of February, 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR APPELBAUM

and
FLORENCE APPELBAUM (DECEASED)

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income

Taxes under Article ~~(1)~~ 22 of the
Tax Law for the Year ~~(1973)~~ ~~1973~~
1973

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of February, 1978, he served the within

Notice of Decision by (certified) mail upon A.A. Levene, CPA

(representative of) the petitioner in the within proceeding,

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

as follows: A.A. Levene, CPA
444 Park Avenue South
New York, New York 10016

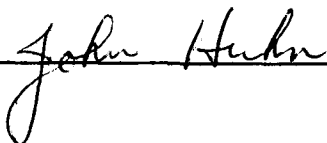
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of February, 1978







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

February 6, 1978

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

**Seymour Appelbaum
& Florence Appelbaum (Deceased)
Unit 748B, Heritage Village
Southbury, Connecticut**

Dear Sir:

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 ~~690~~ **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 CHRYMATT
HEARING EXAMINER**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
SEYMOUR APPELBAUM :
and : DECISION
FLORENCE APPELBAUM (DECEASED) :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1973. :

Petitioners, Seymour Appelbaum and Florence Appelbaum (deceased), Unit 748B, Heritage Village, Southbury, Connecticut 06488, 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 1973 (File No. 12516).

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 February 23, 1977 at 1:15 P.M. Petitioner Seymour Appelbaum appeared pro se and by A.A. Levene, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners were entitled to the refund claimed on their 1973 New York State personal income tax return.

FINDINGS OF FACT

1. Petitioners, Seymour Appelbaum and Florence Appelbaum (deceased), filed a New York State personal income tax resident return for the year 1973, on which they reported their period of New York residence to be January 1, 1973 through November 29, 1973. They also reported a \$1,000.00 capital loss and attached Federal Schedule "D" which indicated that the stock, on which the loss was incurred, was sold by petitioners in December of 1973. The computation of the tax return resulted in an overpayment of tax in the amount of \$2,433.57.

2. The Income Tax Bureau requested additional information from petitioners in a letter dated June 7, 1974, in order to complete its audit. It requested copies of Federal Schedule "A" (Itemized Deductions), and Federal Form 2106 (Employee Business Expenses). It also requested an allocation of income and deductions attributable to the period of New York residence. The Income Tax Bureau inquired whether a Federal audit of petitioner's 1973 Federal tax return was in progress or whether it had been completed. The Income Tax Bureau did not request substantiation of any item.

3. Petitioners did not reply to the Income Tax Bureau's letter of June 7, 1974 or to a follow-up letter dated September 6, 1974. The Income Tax Bureau disallowed the refund in the amount of \$2,433.57 and a Notice of Disallowance was issued on May 19, 1975.

4. At the small claims hearing, petitioner Seymour Appelbaum submitted Federal Schedule "A" and Federal Form 2106. He contended that there had been no Federal audit of his 1973 Federal tax return. He also contended that the New York State personal income tax return filed for the year 1973 included all income and deductions for the entire year.

CONCLUSIONS OF LAW

A. That the Income Tax Bureau is hereby directed to recompute the petitioners return, and issue the resultant refund based on the following changes:

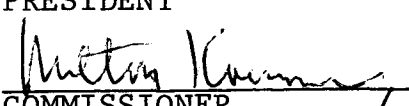
- 1) Proration of total deductions and exemptions by 11/12ths.
- 2) Disallowance of the \$1,000.00 capital loss.

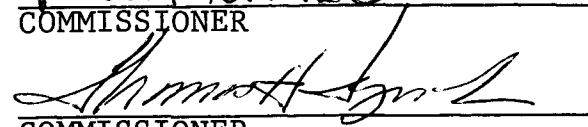
B. That the petition of Seymour Appelbaum and Florence Appelbaum (deceased) is granted to the extent of issuing them a refund as set forth in Conclusion of Law "A", above; and that except as so granted, the Notice of Disallowance issued on May 19, 1975 is in all other respects sustained.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER