

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition .

of
JOSEPH GOLDBERG

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) ~~XXXXXX~~ :
1965, 1966 and 1967

State of New York
County of Albany

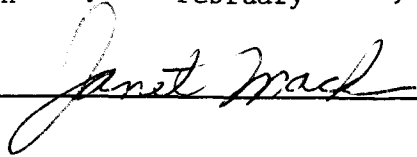
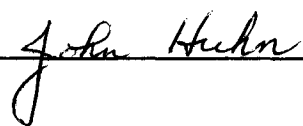
John Hunn , being duly sworn, deposes and says that
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of February , 1978, ~~she~~ she served the within
Notice of Decision by (certified) mail upon Joseph Goldberg
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Joseph Goldberg
125-10 Queens Boulevard Apt. 708
Kew Gardens, NY 11415

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~~
~~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
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

Joseph Goldberg
125-10 Queens Boulevard Apt. 708
Kew Gardens, NY 11415

Dear Mr. Goldberg:

Please take notice of the **Notice of 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,

Joseph Chyrywat
Hearing Examiner

~~936-0000 Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GOLDBERG

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.:

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: DECISION

Petitioner, Joseph Goldberg, residing at 125-10 Queens Boulevard, Apt. 708, Kew Gardens, New York 11415, filed a petition 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. 13748).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 13, 1976 at 10:45 A.M. The petitioner appeared by Joseph Winston, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the period of limitations had expired for the years 1965 and 1966.

II. Whether Federal audit changes were correctly applied to computing the amount shown to be due on the Notice of Deficiency dated January 26, 1976 against the petitioner, Joseph Goldberg, for the years 1965 and 1966.

III. Whether the petitioner was entitled to a refund for the year 1967 based upon an inventory adjustment made for the years 1965 and 1966.

FINDINGS OF FACT

1. Petitioner, Joseph Goldberg, timely filed New York State resident income tax returns for the years 1965, 1966 and 1967. He also filed unincorporated business tax returns for said years.

2. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, imposing additional personal income tax and unincorporated business tax for the years 1965 and 1966. The Notice of Deficiency was based upon Federal audit changes for said years.

3. Petitioner did not file a Report of Change in Federal Taxable Income for New York State income tax and unincorporated business tax purposes on forms IT-115 for the years 1965 and 1966.

4. During the years 1965, 1966 and 1967, petitioner owned a retail ladies' specialty shop. He contended that as a result of an agreement between himself and the Internal Revenue Service, the

closing inventory as of December 31, 1966 was set at \$13,000.00. He further contended that he was advised by the Internal Revenue Service to file an amended 1967 Federal Income tax return based upon an opening inventory for 1967 of \$13,000.00. Petitioner filed the amended 1967 return with the Internal Revenue Service and subsequently received a refund. He did not file an amended New York State income tax return for said year.

5. Petitioner also contended that the Federal adjustments for the years 1965 and 1966 were incorrectly applied by the Income Tax Bureau in computing his New York State personal income tax and unincorporated business tax liabilities for said years. The petitioner submitted schedules and other documentary evidence in support of his contentions.

CONCLUSIONS OF LAW

A. That the petitioner, Joseph Goldberg, did not properly report the Federal changes to New York State for the years 1965 and 1966. Therefore, there would be no expiration of the statute of limitations on assessments with respect to these years in accordance with the meaning and intent of section 683 of the Tax Law.

B. That the schedules and other documentary evidence submitted by the petitioner support his contention that his New York taxable income for personal income tax purposes was \$36,097.58 for 1965 and

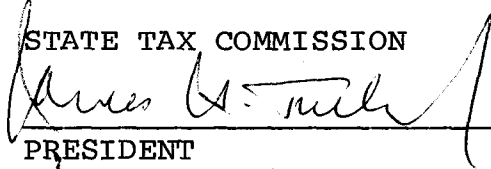
\$32,747.29 for 1966; that he was entitled to a statutory credit of \$10.00 for each of said years; and that his taxable business income for unincorporated business tax purposes was \$12,039.89 for 1965 and \$12,561.08 for 1966.

C. That although the petitioner filed an amended Federal return for the year 1967 and subsequently received a refund from the Internal Revenue Service based upon an inventory adjustment for a prior year, he did not properly file a claim for refund with the New York State Income Tax Bureau within the period of limitation, in accordance with the meaning and intent of section 687 of the Tax Law. Accordingly, the claim for refund for the year 1967 is denied.

D. That the petition of Joseph Goldberg is granted to the extent indicated in Conclusion of Law "B", supra; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 26, 1976; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER