

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

James J. & Macy A. Beha :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Years 1971, 1972. :

State of New York

County of Albany

Jay Vredenburg, 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 9th day of October, 1979, he served the within notice of Decision by certified mail upon Richard J. Taylor the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Richard J. Taylor
Gasser & Hayes
22 Purdy Ave.
Rye, NY 10580

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
9th day of October, 1979.

Marcy Donnini

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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James J. & Macy A. Beha

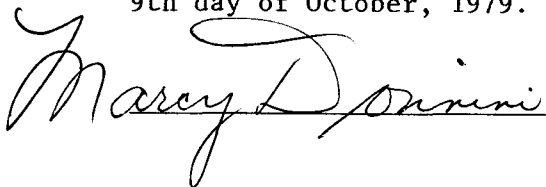
43 Island Dr.

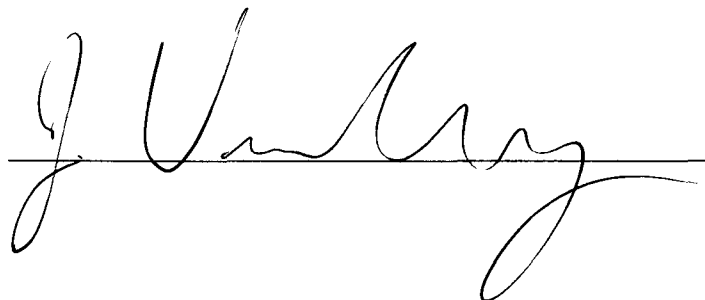
Rye, NY 10580

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of October, 1979.


Marcy D. Dominici



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

October 9, 1979

James J. & Macy A. Beha
43 Island Dr.
Rye, NY 10580

Dear Mr. & Mrs. Beha:

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 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard J. Taylor
Gasser & Hayes
22 Purdy Ave.
Rye, NY 10580
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JAMES J. BEHA and MACY A. BEHA
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1971 and 1972.

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DECISION

Petitioners, James J. Beha and Macy A. Beha, 43 Island Drive, Rye, New York 10580, 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 and 1972 (File No. 13071).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 10 1979 at 1:15 P.M. Petitioner appeared by Richard J. Taylor, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the New York City unincorporated business tax is an "income tax" which must be added to Federal adjusted gross income in determining New York adjusted gross income.

FINDINGS OF FACT

1. Petitioners, James J. and Macy A. Beha, filed joint New York State income tax resident returns for 1971 and 1972, on which Federal adjusted gross income was reported without any additions or subtractions.

2. Petitioner James J. Beha is an attorney and a member of the partnership of Gasser & Hayes. The partnership deducted 1971 and 1972 New York City unincorporated business tax as an item of expense on its Federal returns.

3. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, imposing additional personal income tax for 1971 and 1972 in the sum of \$1,174.85, plus interest of \$189.80, for a total of \$1,364.65. Accompanying the deficiency was a Statement of Audit Changes which stated the following:

In computing total income, you failed to increase income in the amount of \$4,000.00 for the year 1971 and \$3,999.00 for the year 1972 which represents your share of the New York City unincorporated business tax deductions taken on the partnership returns of Gasser & Hayes.

4. Petitioners contended that the New York City unincorporated business tax is not an "income tax" and, therefore, it does not have to be added to Federal adjusted gross income.

CONCLUSIONS OF LAW

A. That the New York City unincorporated business tax is an "income tax" within the meaning of chapter 46, title S of the Administrative Code of the City of New York.

B. That the amounts representing petitioner James J. Beha's distributive share of New York City unincorporated business tax deductions taken on the partnership returns of Gasser & Hayes, must be added to Federal adjusted gross income, in accordance with section 612(b)(3) of the Tax Law and 20 NYCRR 116.2(c).

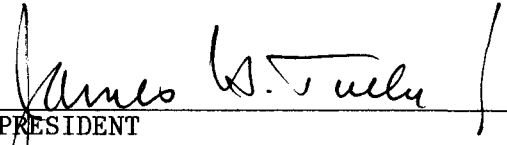
C. That the petition of James J. and Macy A. Beha is denied and the

Notice of Deficiency issued on March 31, 1975 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER