

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Ben & Esta Blaxberg :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income & UBT :
under Article 22 & 23 of the Tax Law :
for the Years 1972, 1973. :
_____ :

AFFIDAVIT OF MAILING

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 28th day of March, 1980, he served the within notice of Decision by certified mail upon Ben & Esta Blaxberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ben & Esta Blaxberg
282 Gorden Dr.
Paramus, NJ 07652

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
28th day of March, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ben & Esta Blaxberg :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income & UBT :
under Article 22 & 23 of the Tax Law :
for the Years 1972, 1973. :

AFFIDAVIT OF MAILING

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 28th day of March, 1980, he served the within notice of Decision by certified mail upon Stanley Fox 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. Stanley Fox
376 McKinley Blvd.
Paramus, NJ

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
28th day of March, 1980.

Joanne Knapp

J. Vredenburg

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

March 28, 1980

Ben & Esta Blaxberg
282 Gorden Dr.
Paramus, NJ 07652

Dear Mr. & Mrs. Blaxberg:

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:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stanley Fox
376 McKinley Blvd.
Paramus, NJ
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BEN BLAXBERG and ESTA BLAXBERG
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 1972 and 1973.

DECISION

Petitioners, Ben Blaxberg and Esta Blaxberg, 282 Gorden Drive, Paramus, New Jersey 07652, 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 1972 and 1973 (File No. 15430).

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 September 20, 1978 at 1:15 P.M. Petitioners appeared by Stanley Fox, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner Ben Blaxberg properly allocated his unincorporated business income to New York State for the years 1972 and 1973.

FINDINGS OF FACT

1. Petitioners, Ben Blaxberg and Esta Blaxberg, timely filed New York State personal income tax nonresident returns for 1972 and 1973. Petitioner Ben Blaxberg also filed unincorporated business tax returns for said years on which he allocated approximately 33 percent of his business income to New York State.

2. The Income Tax Bureau contended that petitioner Ben Blaxberg failed to establish that any portion of his business was carried on outside New York. On October 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against him stating that all business income was deemed to be from New York State sources. The Income Tax Bureau also issued a Statement of Audit Changes against petitioners which incorporated the additional business income for personal income tax purposes. Accordingly, on March 29, 1976, a notice of Deficiency was issued against petitioner Ben Blaxberg for 1972 and 1973 for \$810.38 unincorporated business tax, plus \$154.40 in interest, for a total due of \$964.78. Another Notice of Deficiency was issued March 29, 1976, for the same years against petitioners, Ben and Esta Blaxberg, for \$1,104.80 personal income tax, plus \$208.40 in interest, for a total due of \$1,313.20.

3. During the years at issue, petitioner was engaged in the business of diamond setting. His sole principal was located in New York. Petitioner maintained a place of business in his home in New Jersey where he had a workshop for setting diamonds. The preponderance of his work was done in New Jersey and he filed New Jersey unincorporated business tax returns for the years at issue.

4. Petitioner came into New York to pick up work, to get paid and to deliver the finished work. He occasionally performed diamond setting activities at his principal's place of business in New York. Petitioner allocated a portion (approximately 33 percent) of his income to New York State in accordance with the advice of his accountant who prepared his tax returns for the years at issue.

CONCLUSIONS OF LAW

A. That petitioner Ben Blaxberg allocated an equitable portion of his unincorporated business gross income over his unincorporated business deductions

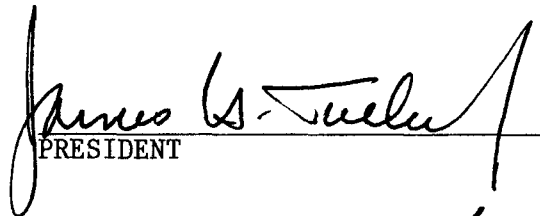
to New York State for the years 1972 and 1973 in accordance with the meaning and intent of section 707(a) of the Tax Law.


B. That the petition of Ben Blaxberg and Esta Blaxberg is granted and the notices of deficiency issued March 29, 1976 for personal and unincorporated business tax purposes are cancelled.

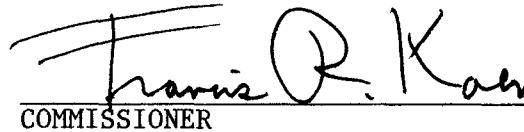
DATED: Albany, New York

STATE TAX COMMISSION

MAR 28 1980


PRESIDENT


COMMISSIONER


COMMISSIONER