

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Frank L. Hoffman (deceased) :

AFFIDAVIT OF MAILING

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 1964 & 1965. :

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 19th day of September, 1980, he served the within notice of Decision by certified mail upon Mark W. Hoffman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

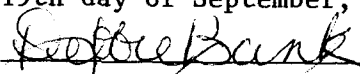
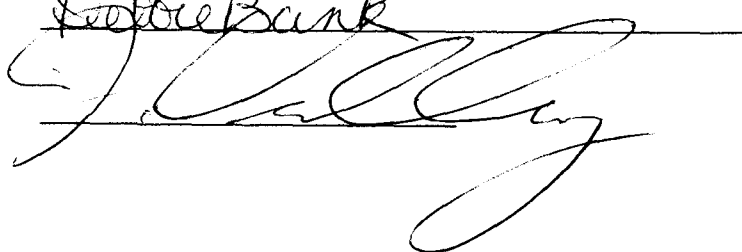
Mr. Mark W. Hoffman
Rosenstock & Turner
488 Broadway
Albany, NY 12207

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

19th day of September, 1980.

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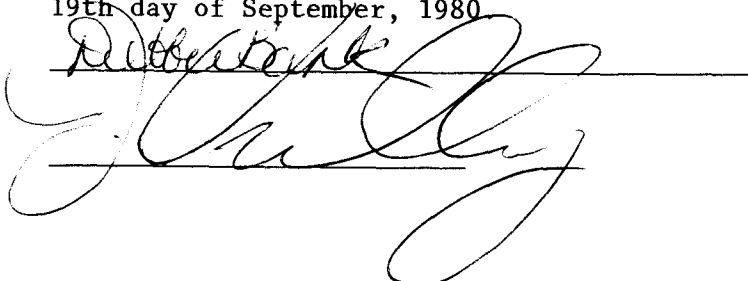
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Sworn to before me this

19th day of September, 1980



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

September 19, 1980

Frank L. Hoffman (deceased)
106 S. Mannning Blvd.
Albany, NY

To the Executor:

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
Mark W. Hoffman
Rosenstock & Turner
488 Broadway
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRANK L. HOFFMAN (DECEASED)	:	DECISION
	:	
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 1964 and 1965.	:	

Petitioner, Frank L. Hoffman (Deceased), 106 South Manning Boulevard, Albany, New York, 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 1964 and 1965 (File No. 01271).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on January 15, 1980 at 10:45 A.M. Petitioner appeared by Mark W. Hoffman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency issued to petitioner should be dismissed on the grounds of laches.

II. Whether the income and salary paid to the owner of a nursing home is subject to unincorporated business tax.

III. If the income and salary paid to the owner is subject to unincorporated business tax, may the petitioner consolidate this income and salary with his distributive share of a partnership loss of another nursing home for purposes of unincorporated business tax.

IV. Whether penalties were properly imposed against petitioner for his failure to file unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Frank L. Hoffman, and his wife, Mary J. Hoffman, filed New York state income tax resident returns for 1964 and 1965. Petitioner, Frank L. Hoffman, did not file unincorporated business tax returns for said years.

2. On May 1, 1967, the Audit Division issued a Statement of Audit Changes against petitioner for the years at issue, on the grounds that; a.) The income from petitioner's nursing home constituted the carrying on of an unincorporated business and is subject to unincorporated business tax. b.) Salary income from petitioner's nursing home, paid to petitioner, is business income and included in the computation of unincorporated business tax. c.) The petitioner made an error in computing his personal income tax for 1965. The adjustment made to petitioner's personal income tax return for 1965 is not at issue and petitioner conceded that the personal income tax was due and correct. Accordingly, the Division issued a Notice of Deficiency to petitioner on May 1, 1967 for 1964 and 1965, imposing personal income and unincorporated business taxes of \$4,057.32, plus \$782.30 in penalty and \$393.94 in interest, for a total due of \$5,233.56.

3. Petitioner was the sole owner of Albany Gardens Nursing Home and reported business income of \$56,262.22 and \$17,967.73 for 1964 and 1965, respectively.

4. Petitioner reported on his tax returns \$12,000.00 in wages from Albany Gardens Nursing Home for each of the years 1964 and 1965.

5. Petitioner was a fifty percent owner in Eden Park Nursing Home, an unincorporated business, which his distributive partnership losses for 1964 and 1965 were \$75,707.92 and \$14,634.84, respectively.

6. Petitioner contended that the distributive share of the unincorporated business partnership loss must be included with income from his own unincorporated business in determining petitioner's unincorporated business income tax liability.

7. Petitioner relied on the advice of his accountant that he was not required to file unincorporated business tax returns.

CONCLUSIONS OF LAW

A. That the State Tax Commission is not estopped from making a claim against petitioner. A state agency or body cannot be estopped from asserting its governmental power regarding acts within its governmental capacity.

B. That the income and salary paid to petitioner from his unincorporated business is gross income within the meaning and intent of section 705 of the Tax Law and is subject to unincorporated business tax in accordance with section 701 of the Tax Law.

C. That the unincorporated business income and distributive share of an unincorporated business partnership loss may not be consolidated for purposes of unincorporated business tax since a partnership is a distinct tax entity in accordance with section 703(a) of the Tax Law. The policy of the State Tax Commission, with respect to section 703(a) of the Tax Law, is evidenced by subsequent codification in regulation 20 NYCRR 203.2 and 20 NYCRR 203.5, effective February 1, 1974.

D. That petitioner's, Frank L. Hoffman, failure to file unincorporated business tax returns for the years at issue was due to reasonable cause and not due to willful neglect; therefore, all penalties imposed pursuant to section 685(a) of the Tax Law are cancelled.

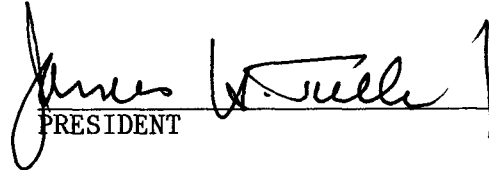
E. That the petition of Frank L. Hoffman is granted only to the extent that all penalties are cancelled. The Audit Division is directed to modify

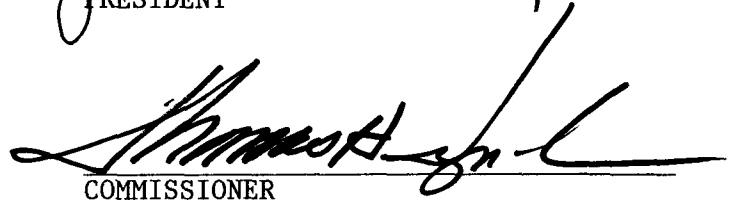
the Notice of Deficiency issued May 1, 1967; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 19 1980


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by

Unit

Date of Request

J. Vredenburg

SEP 20 1981

Please find most recent address of taxpayer described below; return to person named above.

Social Security Number

Date of Petition

Name

Address

Frank L. Hoffman (Hearst)
107 S. Manning Blvd.
Albany, N.Y.

Results of search by Files

☐ New address:☐ Same as above, no better address☐ Other:

Searched by

Section

Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (4-76) 25M

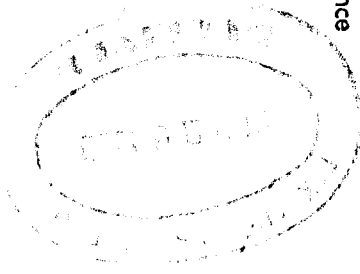
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Frank L. Hoffman (deceased)
S. Manning Blvd.
Albany, NY

11/19/82

1022-77

X

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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 7th day of November, 1980, he served the within notice of Decision by certified mail upon Frank L. Hoffman (deceased), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank L. Hoffman (deceased)
c/o Rosenstock
488 Broadway
Albany, NY 12207

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.

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Sworn to before me this
7th day of November, 1980.

Rebecca A. Bank

J. Vredenburg