

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Myron D. & Sara Lewis :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 16 & 22 of the Tax Law
for the Years 1959, 1960 & 1962 through 1966. :

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 2nd day of January, 1980, he served the within notice of Determination & Decision by certified mail upon Myron D. & Sara Lewis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

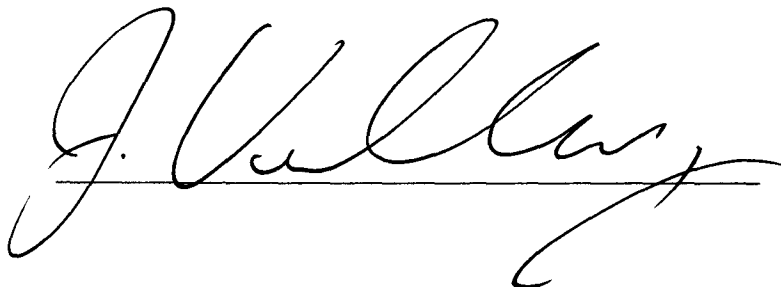
Myron D. & Sara Lewis
356 Desert Inn Rd.
Las Vegas, NV 89109

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
2nd day of January, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Myron D. & Sara Lewis :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
under Article 16 & 22 of the Tax Law
for the Years 1959, 1960 & 1962 through 1966. :

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 2nd day of January, 1980, he served the within notice of Determination & Decision by certified mail upon Herbert Granoff 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. Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020

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
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 2, 1980

Myron D. & Sara Lewis
356 Desert Inn Rd.
Las Vegas, NV 89109

Dear Mr. & Mrs. Lewis:

Please take notice of the Determination & Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 375 & 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 90 days & 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
Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

MYRON D. LEWIS :

DETERMINATION

for Revision of a Determination or for :
Refund of Personal Income Tax under :
Article 16 of the Tax Law for the Year :
1959.

Applicant, Myron D. Lewis, 356 Desert Inn Road, Las Vegas, Nevada 89109, filed a demand for a hearing for revision of a determination or for refund of personal income tax under Article 16 of the Tax Law for the year 1959 (File No. 01320).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 9:15 A.M. and was continued on October 29, 1977 at 9:15 A.M. Applicant appeared by Herbert Granoff, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Income Tax Bureau properly assessed additional income taxes, on the basis that unexplained cash bank deposits by applicant, Myron D. Lewis, were regarded as unreported income for 1959.

II. Whether a fraud penalty was properly assessed against applicant for 1959.

FINDINGS OF FACT

1. Applicant, Myron D. Lewis, timely filed a New York State income tax resident return for 1959. By a series of successive consents executed by applicant, the period of limitations for making assessment of personal income tax for 1959 was extended to June 15, 1968.

2. On March 20, 1968, as a result of an audit by the Special Investigations Bureau, the Income Tax Bureau issued a Notice of Additional Assessment against applicant for income taxes of \$4,106.10, plus penalty of \$4,106.10 and interest of \$7,883.71, for a total due of \$16,095.91.

3. On April 16, 1968, applicant filed an application for recomputation of a Notice of Additional Assessment of Income Tax for 1959. (This application was not filed on the correct form. However, the Bureau accepted it as a proper application.) On June 6, 1969, the State Tax Commission denied said application. On June 20, 1969, applicant, Myron D. Lewis, filed the appropriate demand for a hearing pursuant to Article 16 of the Tax Law.

4. Applicant, Myron D. Lewis, was a retired chiropodist when in 1955, he invested in the Hotel Van Rensselaer on East 11th Street, New York, New York. Applicant took a lease with an option to buy the hotel. Having turned a losing proposition into a profitable one, applicant purchased the Hotel Van Rensselaer in 1959. At the time, he allegedly borrowed extensively from relatives, giving promissory notes to each lender.

5. Applicant, Myron D. Lewis, did not appear at the formal hearing. A physician's statement stated that said applicant suffered from a heart condition, which prevented his traveling from Las Vegas, Nevada to New York City. A statement by his attending physician advised that applicant, Myron D. Lewis, was "followed in the office on a monthly basis" and has had numerous hospitalizations due to "...coronary artery athero-sclerosis, probable left ventricular aneurysm, and early congestive heart failure."

6. The Special Investigations Bureau of the Department of Taxation and Finance made an audit of the New York State personal income tax return of applicant, Myron D. Lewis, for 1959. In connection with the audit, the Special Investigations Bureau examined applicant's bank accounts in New York for the entire period 1955 through 1966.

7. An analysis of applicant's checking account statements at First National City Bank in New York City showed frequent cash deposits, rather than check deposits. Of the 1959 total deposits of \$40,100.00, \$32,000.00 was deposited in October of that year.

8. The Special Investigations Bureau investigator who made the audit was not available to testify at the formal hearing due to his physical illness. The investigator who did testify had no direct knowledge of the matter, except that which he could obtain from the file.

9. The only testimony as to the source of the cash deposits made to the checking account of applicant, Myron D. Lewis, came from his daughter who lived in Philadelphia, Pennsylvania. Her recollections as to the source of his income were imprecise.

CONCLUSIONS OF LAW

A. That applicant, Myron D. Lewis, failed to meet the burden of proof required to show that the Special Investigations Bureau erroneously assumed that unexplained cash deposits to his checking account in 1959 constituted income to applicant.

B. That to assess a fraud penalty, the understatement must be false or fraudulent with the intent to evade the tax; the Income Tax Bureau did not show that applicant was guilty of fraud with the intent to evade tax.

C. That the Notice of Additional Assessment Income Tax for 1959 is sustained, with the exception of the fraud penalty which is cancelled and except as so granted, the application is in all other respects denied.

DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE TAX COMMISSION

for Redetermination of Deficiencies or for :
Refund of Personal Income Tax under Article
22 of the Tax Law for the Years 1960 and :
1962 through 1966.

III. Whether petitioners were domiciled in New York State in the years 1963 through 1966 and, thus, were required to file income tax returns as residents.

FINDINGS OF FACT

1. Petitioners, Myron D. Lewis and Sara Lewis, timely filed combined New York State resident returns for 1960 and 1962. New York State income tax returns were not filed by petitioners for 1963 through 1966. By a series of successive consents executed by petitioners, the period of limitations for making assessments of personal income tax for 1960 through 1963 was extended to June 15, 1968.

2. The Income Tax Bureau issued statements of audit changes and notices of deficiency on the dates, and in the amounts which follow:

<u>DATE</u>	<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
4/10/68	1960	\$ 1,125.00	\$ 562.50	\$ 471.68	\$ 2,159.18
4/10/68	1962	1,925.88	962.94	576.36	3,465.18
4/29/68	1963	8,959.66	2,490.78	2,170.93	13,621.37
4/29/68	1964	3,901.14	1,084.52	711.18	5,696.84
4/29/68	1965	1,941.30	539.67	237.42	2,718.39
4/29/68	1966	662.65	184.22	41.28	888.15
	<u>TOTAL</u>	<u>\$18,515.63</u>	<u>\$ 5,824.63</u>	<u>\$ 4,208.85</u>	<u>\$ 28,549.11</u>

3. Petitioner Myron D. Lewis was a retired chiroprapist when, in 1955, he invested in the Hotel Van Rensselaer on East 11th Street, New York, New York. Petitioner took a lease with an option to buy the hotel. Having turned a losing proposition into a profitable one, petitioner Myron D. Lewis purchased the Hotel Van Rensselaer in 1959. At the time, he allegedly borrowed extensively from relatives, giving promissory notes to each lender. The hotel was sold in February of 1962.

In January of 1960, petitioner Myron D. Lewis visited Las Vegas, Nevada. While there, he found the business opportunities inviting. He bought two or two and a half percent of a gambling casino, the "California Club". After a short time, petitioner purchased a lease on the "Silver Palace Club", which was a closed gambling casino. Petitioners operated that club as a small business corporation (Silver Palace, Inc.) from April of 1961 until its sale in October of 1963, at a capital gain of \$2,000,000.00. This sale was reported on petitioners' Federal income tax return as an installment sale over a forty-year period.

4. Petitioner Myron D. Lewis did not appear at the formal hearing. A physician's statement stated that said petitioner suffered from a heart condition, which prevented his traveling from Las Vegas, Nevada to New York City. Petitioner Sara Lewis was allegedly busy on a full-time basis, caring for her husband, Myron D. Lewis. A statement by his attending physician advised that petitioner Myron D. Lewis was "followed in the office on a monthly basis" and has had numerous hospitalizations due to "...coronary artery athero-sclerosis, probable left ventricular aneurysm, and early congestive heart failure."

5. The Special Investigations Bureau of the Department of Taxation and Finance made an audit of the New York State personal income tax returns of petitioners, Myron D. Lewis and Sara Lewis, for 1960 and 1962. New York State returns had not been filed by petitioners from 1963 through 1966. In connection with that audit, the Special Investigations Bureau examined petitioners' bank accounts in New York for the entire period 1955 through 1966.

6. An analysis of petitioners' checking account statements at First National City Bank in New York City showed frequent cash deposits, rather than check deposits.

In 1960, only two cash deposits were made, one for \$5,000.00 in June and one for \$7,500.00 in August. The check drawn on the account by petitioner Myron D. Lewis for \$5,000.00 on June 15, 1960 was exhibited at the hearing. It had been deposited on June 17, 1960. The alleged cash deposit, dated August 5, 1960, proved to be a check deposit, the slip for which was exhibited at the hearing.

Evidence was not presented as to cash deposits to bank accounts of petitioners in 1962. The Special Investigations Bureau did find that deposits of \$34,800.00 had been made to the bank accounts of relatives of petitioners. These deposits were asserted to have been cash deposits and were deposits attributed to petitioners, and treated as their undisclosed taxable income in the notices issued in them.

7. The Special Investigations Bureau investigator who made the audit was not available to testify at the formal hearing, due to his physical illness. The investigator who did testify had no direct knowledge of the matter, except that which he could obtain from the file.

8. The only testimony as to the source of the cash deposits made to the checking account of petitioner Myron D. Lewis came from his daughter who lived in Philadelphia, Pennsylvania. Her recollections as to the source of his income were imprecise. She knew nothing of deposits to bank accounts of relatives.

9. Petitioners, Myron D. Lewis and Sara Lewis, rented an apartment at 30 East 9th Street, New York, New York, pursuant to a written lease and renewals thereof from May 16, 1955 to sometime in 1967. Petitioners left the apartment when they went to Las Vegas, Nevada in 1960. Their daughter and other relatives used the apartment as a pied-a-terre throughout the period January 1962 through 1966. Petitioners, Myron D. Lewis and Sara Lewis, stayed in the apartment for a week or so several times a year, whenever they returned to New York City between 1962 and 1966. According to the uncontradicted testimony of Helen Somer, the only daughter of petitioner Myron D. Lewis, petitioners spent no more than a total of a few weeks at the New York apartment after July of 1962.

10. Petitioners, Myron D. Lewis and Sara Lewis, have resided in Las Vegas since December of 1960. They lived in a hotel until they leased an apartment at 401 North 7th Street, Las Vegas, Nevada, as of July 1, 1962. On June 27, 1966, they moved to 356 Desert Inn Road, Las Vegas, Nevada. Numerous telephone bills, home and car insurance policies, and utility bills were exhibited to show the continuity of petitioners' residence in Las Vegas. Both petitioners registered and voted in Nevada in 1964.

11. Both petitioners made wills in November of 1963, describing themselves as residents of 401 North 7th Street, Las Vegas, Nevada. The wills were drawn by petitioners' New York City attorney, and all three attesting witnesses resided in New York City.

12. Petitioners, Myron D. Lewis and Sara Lewis, filed Federal personal income tax returns from their Las Vegas address. The small business corporation income tax return for Silver Palace, Inc. was filed from Las Vegas. The Internal Revenue agent's report covering petitioners' Federal income tax returns for 1963, 1964 and 1965 indicated petitioners' address as Las Vegas, Nevada.

13. Petitioners, Myron D. Lewis and Sara Lewis, maintained bank accounts in New York City and in Las Vegas, Nevada, from July of 1960 through 1966.

14. No evidence was adduced to show that petitioners filed New York State personal income tax returns (or failed to file) in bad faith, or with the intention of doing wrong or of pursuing some sinister motive.

15. Petitioner Sara Lewis was knowingly associated with all the business dealings of her husband, petitioner Myron D. Lewis.

16. Petitioners' U. S. income tax returns for 1963, 1964 and 1965 were audited and their adjusted gross income for Federal purposes was adjusted as follows:

1963.....	\$ 7,417.32
1964.....	34,229.11
1965.....	12,360.00

The New York statements of audit changes issued by the Special Investigations Bureau on April 15, 1968 indicated that the deficiencies assessed thereon were based on petitioners' net income as follows:

1963.....	\$97,766.60
1964.....	46,861.39
1965.....	27,263.00
1966.....	14,885.00

No evidence was offered as to the audit conducted to arrive at the above figures. No interrelationship between the Federal figures for the three common years and the deficiencies asserted was proffered.

CONCLUSIONS OF LAW

A. That petitioners, Myron D. Lewis and Sara Lewis, established by credible evidence that the alleged cash deposits made to their checking account in 1960 were actually check deposits.

B. That no evidence was adduced at the formal hearing to show that cash deposits in 1962 to the accounts of petitioners' relatives represented income attributable to petitioners for tax purposes.

C. That upon a petition for review of a denial of a refund or for redetermination of a deficiency, the burden of proof is upon the petitioner with stated exceptions, one of which is where petitioner is charged with fraud. In that case, the burden of proof is upon the Commission [Tax Law, section 689(e)(1)]. Based on "A" and "B" above, the Income Tax Bureau did not meet the burden of proof that petitioners were guilty of fraud with the intent to evade tax.

D. That petitioners, Myron D. Lewis and Sara Lewis, became domiciliaries of Nevada in July of 1962, and were nonresidents of New York State from 1963 through 1966. In the years 1963 through 1966, petitioners did not spend 183 days in New York in any one year. They were not required to file income tax returns under the Tax Law, since their income was from non-New York sources.

E. That the petition of Myron D. Lewis and Sara Lewis is granted and the notices of deficiency with respect to 1960, 1962 and 1963 through 1966 are cancelled.

DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER