

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard J.(dec'd) & Mary C. Muller-Thym :
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 1960 - 1964. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Bernard J.(dec'd) & Mary C. Muller-Thym, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard J.(dec'd) & Mary C. Muller-Thym
c/o Anne Jones
Bronx, NY 10472

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
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard J.(dec'd) & Mary C. Muller-Thym :
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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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Anne Jones the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Anne Jones
5565 Netherlands Ave.
Bronx, NY 10472

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
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

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

March 21, 1980

Bernard J. (dec'd) & Mary C. Muller-Thym
c/o Anne Jones
5565 Netherlands Ave.
Bronx, NY 10472

Dear Ms. Muller-Thym:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Anne Jones
5565 Netherlands Ave.
Bronx, NY 10472
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard J. Muller-Thym (Deceased) :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law :
for the Years 1963 - 1967. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Bernard J. Muller-Thym (Deceased), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

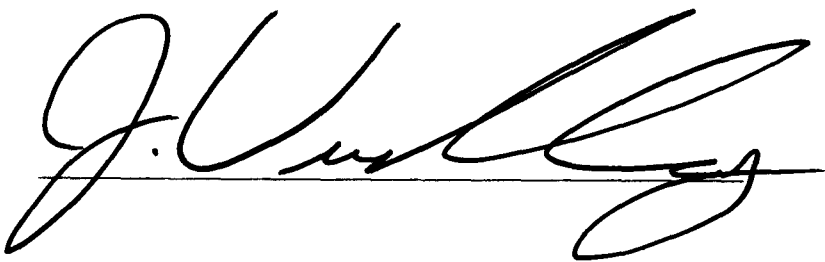
Bernard J. Muller-Thym (Deceased)
c/o Public Administrator-County of New York
New York, NY 10007

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
21st day of March, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard J. Muller-Thym (Deceased) :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law :
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AFFIDAVIT OF MAILING

State of New York
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Sworn to before me this
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

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

March 21, 1980

Bernard J. Muller-Thym (Deceased)
c/o Public Administrator-County of New York
309 Surrogates Court Bldg.
New York, NY 10007

Dear Sirs:

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
Anne Jones
5565 Netherlands Ave.
Bronx, NY 10472
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
BERNARD J. MULLER-THYM (DECEASED) : DECISION
and :
MARY C. MULLER-THYM :
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 1960 through :
1967. :

Petitioners, Bernard J. Muller-Thym (deceased), c/o Public Administrator - County of New York, 309 Surrogates Court Building, New York, New York 10007, and Mary C. Muller-Thym, c/o Anne Jones, 5565 Netherlands Avenue, Bronx, New York 10472, filed petitions 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 1960 through 1967 (File Nos. 15267 and 15268).

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 December 1, 1977 at 1:15 P.M. Petitioners appeared by their daughter, Anne Jones, as attorney-in-fact. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

The attorney-in-fact for petitioners requested that the case be marked "submitted."

Due consideration having been given to all the facts in the file, the State Tax Commission has rendered its decision.

ISSUE

Whether the Income Tax Bureau properly asserted a fraud penalty against petitioners on the personal income and unincorporated business taxes due and unpaid according to tax returns filed in 1969 for the years 1960 through 1967.

FINDINGS OF FACT

1. Petitioners, Bernard J. Muller-Thym and his wife, Mary C. Muller-Thym, filed joint New York State income tax resident returns (Form IT-201) for the years 1960 through 1964. Petitioner Bernard J. Muller-Thym (now deceased) filed separate New York State resident returns for 1965, 1966 and 1967. Petitioner Bernard J. Muller-Thym filed unincorporated business tax returns (Form IT-202) for each of the years 1960 through 1967. All the tax returns were filed in September of 1969.

2. On August 31, 1970, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Bernard J. Muller-Thym and Mary C. Muller-Thym, for a total allegedly due of \$18,864.97. An accompanying Statement of Audit Changes detailed the liability as follows:

<u>Year</u>	<u>P.I.T.</u>	<u>Penalty Sec. 685 (e)</u>	<u>Penalty Sec. 685 (c)</u>
1960	\$ 824.00	\$ 412.00	\$ 23.07
1961	1,662.00	831.00	46.54
1962	1,709.00	854.50	47.85
1963	2,729.00	1,364.50	76.41
1964	<u>2,802.00</u>	<u>1,401.00</u>	<u>78.46</u>
TOTAL	\$9,726.00	\$ 4,863.00	\$ 272.33
	Interest to August 31, 1970.....		\$ 4,003.64
	Total due as of that date.....		\$18,864.97

3. On August 31, 1970, the Income Tax Bureau issued a Notice of Deficiency against petitioner Bernard J. Muller-Thym, asserting a total allegedly due of \$1,783.64. A Statement of Audit Changes of the same date detailed the deficiency as follows:

<u>Year</u>	<u>U.B.T.</u>	<u>Penalty Sec.685 (e)</u>	<u>Penalty Sec.685 (c)</u>
1963	\$333.00	\$166.50	\$ 9.33
1964	<u>620.00</u>	<u>310.00</u>	<u>17.36</u>
TOTAL	\$953.00	\$476.50	\$26.69

Interest to August 31, 1970.....\$ 327.45
 Total Due as of that date..... 1,783.64

4. On August 31, 1970, the Income Tax Bureau issued a Notice of Deficiency against petitioner Bernard J. Muller-Thym, asserting a total allegedly due of \$8,826.26. A Statement of Audit Changes of the same date explained the taxes due as follows:

<u>Year</u>	<u>P.I.T.</u>	<u>U.B.T.</u>	<u>Penalty Sec.685 (e)</u>	<u>Penalty Sec.685 (c)</u>
1965	\$2,130.00	\$ 789.00	\$1,459.50	\$ 81.73
1966	789.00	367.00	578.00	32.37
1967	<u>600.00</u>	<u>357.00</u>	<u>478.50</u>	<u>26.80</u>
TOTAL	\$3,519.00	\$1,513.00	\$2,516.00	\$140.90

Interest to August 31, 1970.....\$1,137.36
 Total Due as of that date.....\$8,826.26

5. Petitioners timely filed petitions for redetermination of the income and unincorporated business taxes asserted against them jointly and individually.

6. Petitioner Bernard J. Muller-Thym described himself on all his income tax returns as a consultant. Petitioner Mary C. Muller-Thym was described as a housewife on the joint returns from 1960 through 1964.

7. In 1969 according to his statement to taxing authorities, petitioner Bernard J. Muller-Thym voluntarily sought the aid of attorneys and certified public accountants to file all his federal, state and city tax returns. For a number of years, petitioner's Boston attorneys negotiated with Internal Revenue Service authorities, regarding its assertion of fraud penalties on Federal taxes

found to be due. These attorneys sought to have New York State taxing authorities abate fraud penalties on state taxes found to be due. The attorneys wrote to the Income Tax Bureau that the Internal Revenue Service had decided not to press fraud penalties, but no verification of that alleged action appears in the file.

8. There are no facts in the file to show that petitioners' failure to file timely their State income tax return was done in bad faith, or was an attempt to evade taxes, or that they engaged in intentional wrongdoing.

CONCLUSIONS OF LAW

A. That the personal income tax and the unincorporated business taxes found to be due by the Income Tax Bureau are presumed to be correct. The burden of proof as to these issues is upon petitioner (section 689(e) of the Tax Law). Petitioners have not contested the findings and have adduced no proof that the tax deficiencies are not accurate and correct.

B. That under section 689(e) of the Tax Law the burden of proof is on the Income Tax Bureau when it asserts fraud on the part of the taxpayer. The presumption of the correctness of the deficiency does not apply. There must be a showing of actual and intentional wrongdoing. The intent must be the specific purpose to evade a tax believed to be owing. The Income Tax Bureau failed to meet this burden. Mertens - Law of Federal Income Taxation Vol. 10 Par. 55.10, Chap. 55 Page 44.

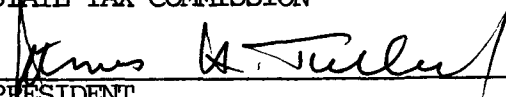
C. That the petition of Mary C. Muller-Thym is granted to the extent of cancelling the fraud penalty under section 685(e) of the Tax Law asserted against her for the years 1960 through 1964, and that, except as so granted, the petition is denied and the Notice of Deficiency dated August 31, 1970 is sustained.

D. That the petition of Bernard J. Muller-Thym is granted to the extent of cancelling the penalty under section 685(e) of the Tax Law for the years 1960 through 1967 but that in all other respects, the petition is denied and the notices of deficiency dated August 31, 1970 are sustained, together with such interest as may be lawfully due.


DATED: Albany, New York

MAR 21 1980

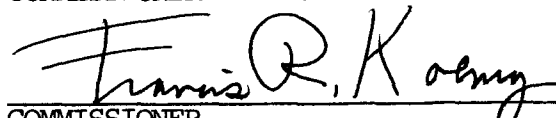
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER