

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Samuel L. Nadler :

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 Year 1973. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Samuel L. Nadler, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel L. Nadler
161 Fallon Ave.
Elmont, NY 11003

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

16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Samuel L. Nadler
161 Fallon Ave.
Elmont, NY 11003

Dear Mr. Nadler:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SAMUEL L. NADLER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

Petitioner, Samuel L. Nadler, 161 Fallon Avenue, Elmont, New York 11003, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 19335).

On July 25, 1979, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether New York City unincorporated business tax is deductible in computing New York State personal income tax.

FINDINGS OF FACT

1. Petitioner, Samuel L. Nadler, timely filed a New York State Combined Income Tax Return with his wife for the year 1973.

2. On March 28, 1977 the Audit Division issued a Statement of Audit Changes wherein it stated:

"Unincorporated business taxes imposed by New York City are not deductible in determining personal income tax. On your personal income tax return, you failed to increase your Federal income by the amount of \$1,524.00, which represents your share of the New York City unincorporated business tax deduction taken on the partnership return of Finkel, Nadler and Goldstein."

Accordingly, a Notice of Deficiency was issued against petitioner

on March 28, 1977 asserting additional personal income tax of \$228.60, plus interest of \$52.05, for a total due of \$280.65.

3. Petitioner's sole ground for contesting the deficiency at issue herein is his contention that "this tax has been unlawfully and unconstitutionally imposed and/or applied".

CONCLUSIONS OF LAW

A. That income taxes imposed by this State or any other taxing jurisdiction, to the extent deductible in determining Federal adjusted gross income shall be added to such income in determining the New York adjusted gross income of a resident individual, within the meaning and intent of sections 617 and 612(b)(3) of the Tax Law. Accordingly, New York City unincorporated business tax is not properly deductible in computing New York State personal income tax.

B. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that the Tax Law is constitutional to the extent that the law relates to the imposition of income tax liability on the petitioner.

C. That the petition of Samuel L. Nadler is denied and the Notice of Deficiency dated March 28, 1977 is sustained, together with such additional interest which is lawfully owing.

DATED: Albany, New York
MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER