

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Irving Roesch :
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 & 1974. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Estate of Irving Roesch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Irving Roesch
c/o Malvin Roesch, Administrator
Livingston, 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Irving Roesch :
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 & 1974. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Frederic Z. Konigsberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

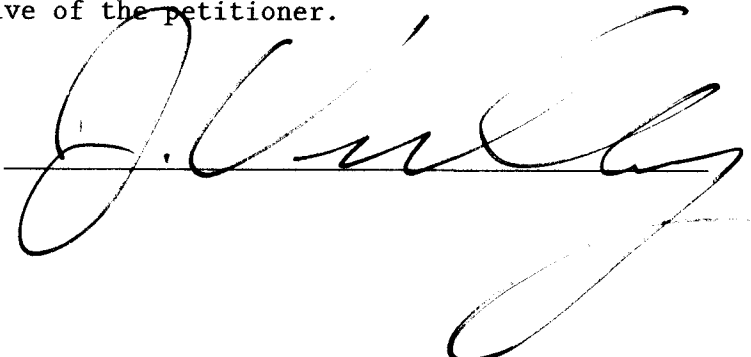
Mr. Frederic Z. Konigsberg
185 Great Neck Rd.
Great Neck, NY 11021

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
11th day of April, 1980.

Joanne Knapp



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

April 11, 1980

Estate of Irving Roesch
c/o Malvin Roesch, Administrator
6 Brayton Ln.
Livingston, NJ

Dear Mr. Roesch:

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
Frederic Z. Konigsberg
185 Great Neck Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ESTATE OF IRVING ROESCH : 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 1972, 1973 and 1974. :

Petitioner, Estate of Irving Roesch (Malvin Roesch, Administrator), 6
Brayton Lane, Livingston, New Jersey, 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, 1973 and
1974 (File No. 21609).

A small claims hearing was held before Allen Caplowaith, Hearing Officer,
at the offices of the State Tax Commission, Two World Trade Center, New York,
New York, on November 8, 1979 at 10:45 A.M. Petitioner appeared by Frederic Z.
Konigsberg, Esq. The Audit Division appeared by Ralph Vecchio, Esq. (Frank
Levitt, Esq., of counsel).

ISSUE

Whether cash found in decedent's safe deposit boxes represented unreported
business income attributable to the years 1972, 1973 and 1974.

FINDINGS OF FACT

1. Irving Roesch, the decedent, filed New York State income tax resident
returns for the years 1972, 1973 and 1974. Additionally, he filed New York
State unincorporated business tax returns for said years, whereon he reported

income derived from his sole proprietorship operating under the business name of Stanley's, which was engaged in the activity of selling cigarettes, candy, newspapers and various other items.

2. On November 13, 1975, Irving Roesch was slain on his business premises, which was subsequently set ablaze in what was believed to be an attempt to conceal the murder. Consequently, all the decedent's business records perished in the fire.

3. On January 5, 1976, two safe deposit boxes maintained by the decedent were examined by a representative of the New York State Department of Taxation and Finance. Said examination disclosed \$44,126.00 in cash in the box maintained at the National Bank of North America and \$26,117.00 in cash in the box maintained at the Ridgewood Savings Bank.

4. On July 7, 1977, the Audit Division issued a Statement of Audit Changes wherein one-third of the total cash found of \$70,243.00 was allocated to each of the years 1972, 1973 and 1974. Since the Department's position was that the cash represented previously unreported business income, it was held taxable for both personal income tax and unincorporated business tax purposes. Accordingly, a Notice of Deficiency was issued against the Estate of Irving Roesch on January 30, 1978 asserting additional personal income tax for the years 1972, 1973 and 1974 of \$1,908.78, \$1,904.52 and \$1,947.37 respectively, unincorporated business tax of \$860.63, \$872.18 and \$907.17 respectively, and total interest of \$2,464.00, for a total due of \$10,864.75. Said Notice of Deficiency, although not issued within the general three year period for assessment for the years 1972 and 1973, was timely issued pursuant to section 683(d) (1) of the Tax Law which allows for a six year period of assessment where an individual omits an amount in excess of twenty-five percent of his New York adjusted gross income stated on the return.

5. Petitioner contended that the cash at issue consisted of previously reported income and represented lifetime savings of the decedent. Further, it is contended that even if the cash was not previously reported, the Audit Division's position that it represents income derived during the years at issue is totally arbitrary.

6. The following adjusted gross income was reported by the decedent for the years 1964 through 1974, as evidenced by the returns for the years at issue herein and for the prior years by Income Tax Bureau - Files Section:
(Information from Files Reference Card - Forms IT-2270.1)

<u>Years</u>	<u>Amounts</u>
1964	\$2,523.00
1965	2,522.00
1966	2,983.00
1967	3,989.00
1968	2,906.00
1969	2,945.00
1970	4,466.00
1971	2,805.00
1972	2,949.00
1973	3,235.00
1974	3,938.00

7. A witness who appeared for petitioner at the hearing held herein testified that:

- a. He was a good friend of the decedent for approximately twelve years prior to his death and visited him in his store or telephoned him on a daily basis.
- b. Decedent, a single individual, could have lived on \$50.00 per month.
- c. Decedent lived in the rear portion of the store and slept on a cot.
- d. Decedent considered it a sin to spend money.

- e. Decedent kept the store, which was always dimly lit, at a very low temperature, even though the landlord paid the fuel bills.
- f. Decedent ate old bread and fruits and vegetables on the verge of spoiling, which he bought or received free from the local merchants.
- g. Decedent's store was in shambles, disorganized and piled with boxes.
- h. Decedent did not smoke, drink or spend money on entertainment.
- i. Decedent wore old, cheap clothes.
- j. Decedent sold goods at a very low profit.
- k. Decedent kept the store open seven days a week and didn't close at a regular time, and
- l. Decedent owned a broken down automobile which he rarely used.

8. A second witness who appeared for petitioner at the hearing testified that:

- a. He is an attorney and registered public accountant, and he prepared the decedent's personal and business returns from approximately 1960 through 1974, and
- b. Decedent's business could not possibly generate the amount of income during the years at issue, which the Audit Division contends.

Additionally, he reiterated the first witness's testimony relating to the lifestyle of the decedent of which he described as that of a "miser".

9. Neither witness had knowledge of the decedent's business activities prior to 1960, but they believe he may have had another business.

10. Malvin Roesch, administrator of the Estate of Irving Roesch, submitted a sworn affidavit wherein he stated that he was a witness to the box openings and "most of the currency was wrapped in ten to fifteen year old newspaper and it was apparent that the currency was also of the same age".

11. A newspaper article submitted, relating to the death of the decedent, described him as the "neighborhood eccentric" and as having "lived frugally in a cramped rear storeroom".

12. A witness who appeared at the hearing on behalf of the Department testified that:

- a. The only reason that the cash found in the safe deposit boxes was taxed over the three year period at issue was to give the taxpayer relief. He further stated that there was no factual basis for allocating the income over the three years.
- b. No books and records were examined by the Department since there were none available, and
- c. No attempt was made by the Department to age the currency found in the boxes.

13. No disclosure was made as to whether the Department had requested to review the bank records for the purpose of determining the dates that the decedent had visited the safe deposit boxes at issue.

CONCLUSIONS OF LAW

A. That since the taxpayer was deceased, the executor submitted the best evidence available to him as to the source of the cash in the safe deposit boxes. Said evidence, consisting of testimony from two witnesses as to the frugal lifestyle maintained by the decedent, a newspaper article reiterating same, and the executor's sworn affidavit describing the apparent age of the

currency found, leads to the strong inference that the decedent had, as contended, saved the cash at issue over his lifetime. This, coupled with the fact that the Audit Division had no basis, in fact, for asserting the deficiency other than that the cash was found, leads to the conclusion that the deficiency was, in fact, arbitrary. Accordingly, the petition of the Estate of Irving Roesch is granted and the Notice of Deficiency dated January 30, 1978 is cancelled.

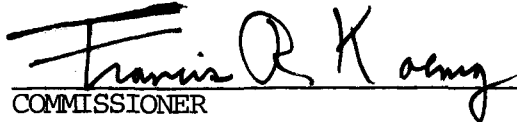
DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER