

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Jack Rosenfeld

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 1971 - 1974. :

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 January, 1980, he served the within notice of Decision by certified mail upon Jack Rosenfeld, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Rosenfeld  
165 E. 72nd St., Apt. 17E  
New York, NY 10021

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 January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
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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 January, 1980, he served the within notice of Decision by certified mail upon Ronald Dreier the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

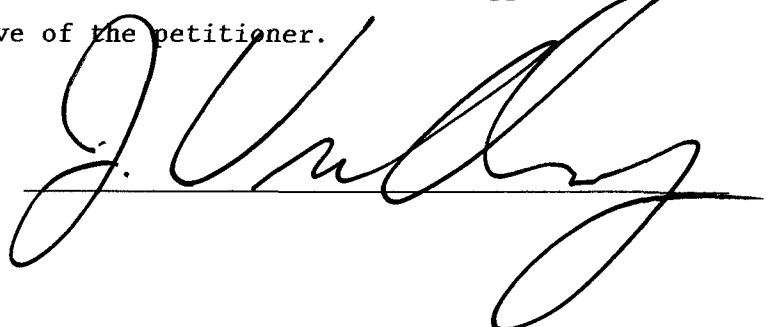
Mr. Ronald Dreier  
555 Madison Ave.  
New York, NY 10021

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 January, 1980.

Joanne Knapp



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

January 11, 1980

Jack Rosenfeld  
165 E. 72nd St., Apt. 17E  
New York, NY 10021

Dear Mr. Rosenfeld:

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  
Ronald Dreier  
555 Madison Ave.  
New York, NY 10021  
Taxing Bureau's Representative

## STATE TAX COMMISSION

II. Whether petitioner had reasonable cause for his failure to file New York State unincorporated business tax returns for 1971 through 1974.

FINDINGS OF FACT

1. Petitioner, Jack E. Rosenfeld, filed New York State resident income tax returns for 1971 through 1974. Petitioner did not file unincorporated business tax returns for said years.

2. On January 26, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, showing additional personal income tax for 1972 and unincorporated business tax for 1971 and 1972. (The personal income tax audit change for 1972, which resulted from an adjustment for life insurance premiums, was not protested by petitioner.)

The Statement of Audit Changes stated that the income from petitioner's racing stable is subject to unincorporated business tax. Accordingly, the Income Tax Bureau issued a Notice of Deficiency to petitioner on January 26, 1976 for \$2,384.45, plus penalty of \$964.66 and interest of \$504.64, for a total of \$3,853.75.

On November 22, 1976, the Income Tax Bureau issued another Statement of Audit Changes to petitioner, on the grounds that the income derived from petitioner's racing stable was subject to unincorporated business tax for 1973 and 1974. Accordingly, the Bureau issued a Notice of Deficiency to petitioner on November 22, 1976 for \$5,758.74 in unincorporated business tax, plus \$1,920.21 in penalty and \$924.92 in interest, for a total due of \$8,603.87.

3. During the years at issue, petitioner was an officer of Hanover House Industries, Inc., a subsidiary of Horn & Hardart, Inc. Petitioner's contract required him to devote all of his time and efforts to the business of Hanover House Industries, Inc. and related companies, and prohibited him from engaging in any other trade or business.

4. In September of 1970, petitioner accompanied his brother-in-law, Alan Leavitt, to a standardbred yearling sale being conducted by a company owned by Alan Leavitt. During the course of the sale, Alan Leavitt told petitioner to bid up to eight or ten thousand dollars on a yearling called "Pammy Lobell" which he did, and so purchased the yearling. Prior to that time, petitioner had never owned any interest in a race horse.

5. Alan Leavitt, a prominent figure in the standardbred racing industry, decided that Pammy Lobell was to be given to the William Haughton Stables for training. The main office of that stable was in Westbury, New York.

6. Petitioner did not pay for Pammy Lobell, in that his brother-in-law advanced him the purchase price. During all of 1971 and for part of 1972, the bills for training and all other expenses were sent to Lana Lobell Farms in Hanover, Pennsylvania, which is a standardbred breeding farm owned and operated by Alan Leavitt. The farm paid all bills and received all purse winnings through July of 1972, at which point Pammy Lobell had won sufficient purses so that not only the horse, but all expenses for training and the like were entirely paid for. Thereafter, all bills and purse monies were sent directly to petitioner's office in New York.

7. Petitioner was not fully aware of the income and expense of Pammy Lobell until he received the statements at year's end and then started receiving the statements directly from William Haughton Stables. The bill enumerated the monthly expenses which included feed, administrative, training, grooms' wages, ten percent of winnings, shoeing, repairs, supplies, transportation, veterinary expenses and starting fees, among other expenses. Petitioner incurred expenses other than those billed by the trainer. Petitioner deducted phone and travel expenses other than

for drivers and the horses' transport. Petitioner never made any decisions in connection with the horse, nor was he asked to do so. Any decisions with respect to where and whether Pammy Lobell should be raced were made either by William Haughton Stables or Alan Leavitt, or by others at Lana Lobell Farms. During the periods when this horse was not racing, petitioner stated the horse was returned to Lana Lobell Farms, though bills from the trainer for board are incurred for almost every month during the period in issue.

8. Pammy Lobell earned substantial amounts of money during the years at issue and was raced at race tracks in a number of states including New York. Based primarily on the trainer's decision, the horse was frequently transported from one track to another. In addition to owning Pammy Lobell, petitioner owned a five percent interest in a horse named Irton Prince during one year at issue and a half interest in a horse named Merrin during years here at issue. He acquired these interests in the other horses when told to do so by Alan Leavitt. The interest in Irton Prince was sold for approximately what petitioner paid and half of the interest in Merrin was sold for the same amount paid. These horses were not raced to any great extent, nor did petitioner make any decisions in connection with them.

9. Petitioner contends that his ownership of standardbred race horses was merely an investment by him, similar to his acquisition of a note, bond, or share of stock.

#### CONCLUSIONS OF LAW

A. That the activity of owning and racing standardbred horses with a degree of continuity, frequency and regularity constitutes the conduct of an unincorporated business, and that the income therefrom is subject to unincorporated business tax imposed by Article 23 of the Tax Law.

B. That although petitioner, Jack E. Rosenfeld, personally expended little time in connection with the ownership and racing of his horses, the activities of William Haughton Stables and Alan Levitt and the activities of their employees, all as agent of petitioner, were carried on frequently and regularly and with the devotion of energy and thought necessary to constitute the conduct of an unincorporated business.

C. That where an unincorporated business is carried on within and without New York State, a fair and equitable portion of the excess of its unincorporated business gross income over its business deductions can be allocated, provided that the unincorporated business has a regular place of business outside the State (Section 707(a) of the Tax Law).

D. That Lana Lobell Farms, the William Haughton Stables, and/or race tracks at which petitioner's horses raced do not constitute regular places of business outside New York State, in accordance with the meaning and intent of section 707(a) of the Tax Law; therefore, all income derived from the ownership and racing of race horses must be allocated to New York State.

E. That petitioner had reasonable cause for his failure to file New York State unincorporated business tax returns for the years at issue.

F. That the petitions of Jack E. Rosenfeld are granted to the extent of cancelling the penalties imposed under sections 685(a)(1) and (a)(2) of the Tax Law for the years at issue. The Income Tax Bureau is hereby directed to so modify the notices of deficiency issued January 26,

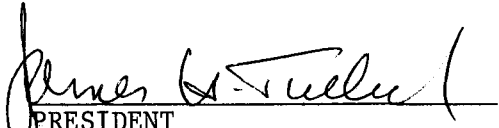


1976 and November 22, 1976 and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER