

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles F. Straney (deceased) :
and Helen G. Straney : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 16 of the Tax Law
for the Years 1955,1956. :

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 5th day of September, 1980, he served the within notice of Decision by mail upon Charles F. Straney (deceased), and Helen G. Straney, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles F. Straney (deceased)
and Helen G. Straney
4 Clover Lane
Loudonville, NY 12211

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
5th day of September, 1980.

Debbie Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles F. Straney (deceased) :
and Helen G. Straney : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 16 of the Tax Law
for the Years 1955,1956. :

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 5th day of September, 1980, he served the within notice of Decision by mail upon James C. Straney 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. James C. Straney
3 Gafers Ct.
Latham, NY 12110

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
5th day of September, 1980.

Debbie Bank

J. Vredenburg

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

September 5, 1980

Charles F. Straney (deceased)
and Helen G. Straney
4 Clover Lane
Loudonville, NY 12211

Dear Mrs. Straney:

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) 375 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 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
James C. Straney
3 Gafers Ct.
Latham, NY 12110
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
CHARLES F. STRANEY (Deceased)	:	
and	:	DECISION
HELEN G. STRANEY	:	
for Revision of a Determination or for Refund	:	
of Personal Income Tax under Article 16 of	:	
the Tax Law for the Years 1955 and 1956.	:	

Petitioners, Charles F. Straney (deceased) and Helen G. Straney, 4 Clover Lane, Loudonville, New York 12211, filed petitions for revision of a determination or for refund of personal income tax under Article 16 of the Tax Law for the years 1955 and 1956 (File No. 01518).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on March 28, 1980 at 9:15 A.M. Petitioners, Charles F. Straney and Helen G. Straney, appeared by James C. Straney, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

I. Whether Notice of Additional Assessment of Income Tax, in the amount of \$121.13, was paid.

II. Whether payments made by petitioner Charles F. Straney's employer to him qualified as payments made under an accident or health plan, thereby exempt from normal tax.

FINDINGS OF FACT

1. Petitioners, Charles F. Straney and Helen G. Straney, timely filed New York State income tax resident returns for 1955 and 1956. On the 1956 return, a subtraction of \$1,730.40 was taken for income received by petitioner Charles F. Straney from his employer while out sick.

2. On December 29, 1958, the Income Tax Bureau issued a Notice of Additional Assessment of Income Tax against petitioner Charles F. Straney, imposing normal tax of \$121.13 for 1956 on the grounds that the payments made by the petitioner's employer did not qualify as accident or health insurance payments.

3. On December 30, 1958, petitioner Charles F. Straney paid the Notice of Additional Assessment of Income Tax issued December 29, 1958.

4. On March 14, 1958, petitioners filed two Forms IT-113D (Applications for Refund of Personal Income Tax on Payment Under Accident or Health Plan Included in Compensation as Employee Reported in Tax Returns) for 1955 and 1956. The amount of the refunds requested in the applications were \$150.66 and \$53.33 for 1955 and 1956, respectively.

5. The Income Tax Bureau issued disallowance for applications for revision or refund for 1955 and 1956 on August 18, 1958 and December 4, 1958, respectively, on the grounds that the payments made by petitioner's employer did not qualify as payments made pursuant to an accident or health insurance plan under ruling of the State Tax Commission.

6. Petitioner Charles F. Straney was absent from work at the Albany Steel & Iron Supply Co., Inc. from November 26, 1955 to February 10, 1956 due to sickness. During his absence, the petitioner's employer paid him \$2,009.50 and \$2,492.28 for 1955 and 1956, respectively.

7. Albany Steel & Iron Supply Co., Inc. had no formal plan of payment of disability benefits, but paid all salaried employees their full pay while on leave due to sickness or accident. Petitioner was a salaried employee.

8. Petitioners contended that petitioner Charles F. Straney had an enforceable obligation by virtue of an oral employment contract and, therefore, these payments qualified as payment made under an accident or health insurance plan and are wholly excludable from gross income.

CONCLUSIONS OF LAW

A. That the Notice of Additional Assessment of Income Tax issued December 29, 1958 is fully satisfied.

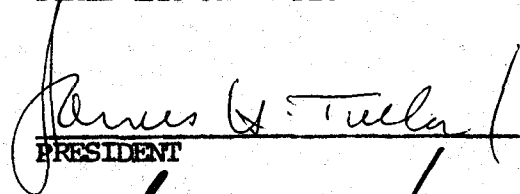
B. That the petitioners failed to establish by independent proof that an enforceable oral contract did exist in lieu of formal written plan. That any voluntary payments made by employer to petitioner because of sickness or personal injury, where there was neither an enforceable obligation nor any existing formal plan requiring such payments, do not fall within the purview of the exclusion in section 359(e) of the Tax Law. (Gordon P. Haynes v. United States; 139 F. Supp. 671, rev'g 233 F.2d 413, rev'g 353 US 81; and Ruling of State Tax Commission, April 4, 1957.)

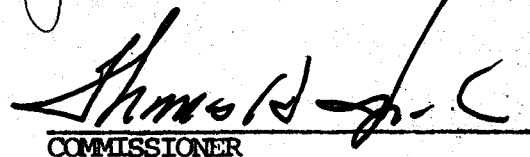
C. That the petitions of Charles F. Straney (deceased) and Helen G. Straney are granted to the extent indicated in Conclusion of Law "A", above; and the applications for refund of personal income tax for the years 1955 and 1956 are denied and the disallowance for applications for revision or refund for 1955 and 1956 are sustained.

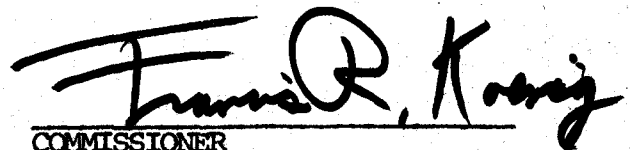
DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER