

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Henry J. Cerasaro (dec'd) :
and Julia Cerasaro : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income & UBT :
under Article 16 & 16A of the Tax Law :
for the Years 1948 through 1955 & 1958. :

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 17th day of April, 1981, he served the within notice of Decision by mail upon Henry J. Cerasaro (dec'd), and Julia Cerasaro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry J. Cerasaro (dec'd)
and Julia Cerasaro
719 Hill Ave.
Endicott, NY 13760

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
17th day of April, 1981.

Carmie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Henry J. Cerasaro (dec'd) :
and Julia Cerasaro : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 16 & 16A of the Tax Law
for the Years 1948 through 1955 & 1958. :

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 17th day of April, 1981, he served the within notice of Decision by mail upon James N. Cahill 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 N. Cahill
145 Washington Ave.
Endicott, NY 13760

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
17th day of April, 1981.

Connie J. Hogeland

J. Vredenburg

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

April 17, 1981

Henry J. Cerasaro (dec'd)
and Julia Cerasaro
719 Hill Ave.
Endicott, NY 13760

Dear Mrs. Cerasaro:

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 & 386J 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 N. Cahill
145 Washington Ave.
Endicott, NY 13760
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HENRY J. CERASARO (Deceased)	:	
and	:	DECISION
JULIA CERASARO	:	
for Revision of a Determination or for	:	
Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 16 and 16A of the Tax Law for	:	
the Periods 1948 through 1955 and 1958.	:	

Petitioners Henry J. Cerasaro (Deceased) and Julia Cerasaro, 719 Hill Avenue, Endicott, New York 13760, filed a petition for revision of a determination or for refund of personal income and unincorporated business taxes under Articles 16 and 16A of the Tax Law for the periods 1948 through 1955 and 1958 (File No. 16749).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on December 4, 1979 at 1:15 P.M. Petitioners appeared by James N. Cahill, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether petitioner Julia Cerasaro is liable for unincorporated business tax.

II. Whether the Notice of Additional Assessment of Income Tax which was based on Federal audit changes for 1948 through 1955 and 1958 is accurate and the taxes, penalties and interest stated therein is due and owing by petitioners.

III. Whether the State Tax Commission was estopped from making a claim against petitioners because of laches.

FINDINGS OF FACTS

1. On July 15, 1974, the Income Tax Bureau issued a Notice of Additional Assessment (of) Income Tax against petitioners, imposing normal tax of \$1,027.51, capital gains tax of \$793.80 and unincorporated business tax of \$336.21, plus penalties of \$2,157.42 (pursuant to Section 376(2) of the Tax Law) and interest of \$11,586.07, less \$1,563.26 paid on account, for a total of \$14,337.85. The notice was based on Federal audit changes for 1948 through 1955 and 1958.

2. Petitioners did not file a Report of Change in Federal Taxable Income for New York State income tax and unincorporated business tax on Form IT-115 for the years 1948 through 1955 and 1958 in accordance with section 367(2) of the Tax Law and Regulations 20 NYCRR 270.21, on the grounds that the Federal audit was being appealed. However, petitioners did make payments on account to the Income Tax Bureau of \$463.26 on May 15, 1962; \$600.00 on July 15, 1965; and \$500.00 on February 15, 1967.

3. On October 4, 1974, petitioners filed applications for revision or refund as prescribed in section 374 of the Tax Law and 20 NYCRR 270.22(b) on the grounds that the penalties and interest are improperly computed.

4. On October 27, 1975, petitioner Henry J. Cerasaro died from a serious heart condition which he suffered for many years. During his last five years, he was unemployed because of this heart condition. During that same period he had no assets except his personal effects and household furniture. The petitioners lived in one-half of a two-family house for which they paid no rent.

5. On September 27, 1976, the Audit Division issued a denial to the applications for revision or refund since the petitioners had not replied to correspondence of April 30, 1976. On October 20, 1976, a Demand for Hearing was filed by the petitioners' representative in accordance with the provisions of section 374 of the Tax Law.

6. The Audit Division's letter of April 30, 1976 had proposed the following offer, subject to the approval of the State Tax Commission. That the penalties would be waived and interest would be reduced to six percent per annum. The offer gave no consideration for the \$1,563.26 previously paid on account.

7. During the years in issue, petitioner Julia Cerasaro was a housewife and had no separate income. She was not engaged in her husband's business activities other than to occasionally act as hostess at her husband's restaurant.

8. At the hearing, petitioners' representative argued that since over thirty years had passed, all of the business records were destroyed in a warehouse fire on November 2, 1968 and since petitioner Julia Cerasaro, presently 67 years old, has no assets, the case be closed because of laches and the \$1,563.26 paid on account be considered full payment.

CONCLUSIONS OF LAW

A. That petitioner Julia Cerasaro was not liable for any unincorporated business tax during the years in issue; the Audit Division is directed to delete her name from that portion of Notice of Additional Assessment.

B. That the Audit Division is hereby directed to recompute the Notice of Additional Assessment in accordance with the offer in the Bureau's letter of April 30, 1976, and apply the payments as received on account against the taxes, thereby stopping the running of interest.

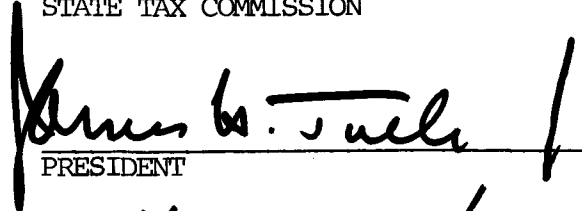
C. That the State Tax Commission is not estopped from making a claim against the applicants. A State agency or body cannot be estopped to assert its governmental power as to acts within its governmental capacity. However, in this case alone, the State Tax Commission does hereby abate the unpaid balance of the recomputed Notice of Additional Assessment in accordance with sections 373(6) and 379(2) of Article 16 of the Tax Law and section 171(15) of Article 8 of the Tax Law.

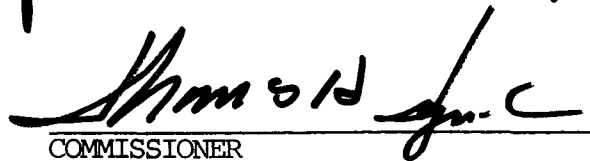
D. That the petition of Henry J. Cerasaro (Deceased) and Julia Cerasaro is granted to the extent indicated in Conclusions of Law "A", "B" and "C", and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

APR 17 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER