

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Murray N. Friedman :

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 Fiscal Years Ending 6/30/69 & 6/30/71-6/30/73.

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 30th day of January, 1981, he served the within notice of Decision by certified mail upon Murray N. Friedman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Murray N. Friedman
575 Ocean Ave.
New York, NY 10018

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
30th day of January, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Murray N. Friedman :

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Personal Income Tax :
under Article 22 of the Tax Law
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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 30th day of January, 1981, he served the within notice of Decision by certified mail upon Henry R. Scheinkman 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. Henry R. Scheinkman
58 North Ave.
New Rochelle, NY 10805

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
30th day of January, 1981.

Connie P. Hagelund

J. Vredenburg

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

January 30, 1981

Murray N. Friedman
575 Ocean Ave.
New York, NY 10018

Dear Mr. Friedman:

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
Henry R. Scheinkman
58 North Ave.
New Rochelle, NY 10805
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MURRAY N. FRIEDMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Fiscal	:	
Year Ending June 30, 1969 and the Fiscal	:	
Years Ending June 30, 1971 through	:	
June 30, 1973.	:	

Petitioner, Murray N. Friedman, 575 Ocean Parkway, Brooklyn, New York 11218, filed a timely petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the fiscal year ending June 30, 1969 and the fiscal years ending June 30, 1971 through June 30, 1973.

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1977 at 10:45 A.M. Petitioner appeared by Henry R. Scheinkman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether petitioner is required to report to the State Tax Commission changes made to his taxable income by the United States Internal Revenue Service on his federal returns for the years at issue.

II. Whether petitioner's wages were properly increased based on pay stubs submitted to the Audit Division.

III. Whether petitioner's failure to file income tax returns timely for subject years was due to reasonable cause and not to willful neglect.

FINDINGS OF FACT

1. Petitioner, Murray N. Friedman, filed his Federal income tax returns for the fiscal years ending June 30, 1969, 1971, 1972 and 1973. He filed New York State income tax resident returns for each of the calendar years 1969, 1971, 1972 and 1973 between January 1 and April 15 of the respective following calendar year. The income and deductions reported by petitioner on each calendar year New York return were the same as the income and deductions reported on his Federal returns for the fiscal year ending June 30 of such calendar year. The Internal Revenue Service audited petitioner's Federal income tax returns for the fiscal years ending June 30, 1971 and June 30, 1972 and made certain adjustments. Petitioner did not report said adjustments to the Audit Division.

2. With respect to the return for the fiscal year ending June 30, 1969, on July 31, 1972 the Audit Division issued a timely Notice of Deficiency with Statement of Audit Changes, against petitioner, asserting a tax deficiency with the following explanation:

"Information available discloses that you are actually filing a fiscal year return for the period July 1, 1968 - June 30, 1969.

Since your return was not filed on or before October 15, 1969, penalty is assessed at the rate of 5% per month not to exceed 25% for late filing.

Based on an audit of your New York State tax return, your personal income tax liability has been recomputed as follows:

New York taxable income per return	\$19,862.00	
Increase in New York taxable income (As per IT-38 Attachment)	<u>3,765.25</u>	
Corrected New York taxable income	<u>\$23,627.25</u>	
Tax on the above	\$ 1,867.82	
Less: Statutory credit	<u>10.00</u>	
New York tax per audit	\$ 1,857.82	
New York tax per return	<u>1,358.44</u>	
ADDITIONAL NEW YORK TAX DUE		\$499.38
Section 685(a) Penalty @ 25% (1,240.09)		310.02
	Interest	<u>105.64</u>
	Total Due	\$915.04"

3. At the hearing, a signed Withdrawal of Petition and Discontinuance of Case (Form IT-97) for the deficiency for fiscal year ending June 30, 1969 was submitted. The form showed a tax liability of \$53.38, plus 685(a) penalty and interest. Based on this the petitioner stipulated and withdrew with prejudice against him his timely petition for redetermination of the deficiency for the fiscal year ending June 30, 1969, and accordingly said year is no longer in issue. (See: pages 9 and 10 of the transcript of the hearing, herein.)

4. With respect to the returns for the fiscal years ending June 30, 1971, 1972 and 1973 the Audit Division issued a Statement of Audit Changes, dated March 13, 1975, and a timely Notice of Deficiency dated March 14, 1975 against petitioner asserting tax deficiencies with the following explanations:

"Since you failed to submit wage and tax statements as issued by your employer for the calendar years 1970, 1971 and 1972 or submit a signed consent form extending the Statute for F/Y/E 6/30/71, your taxable wages and withholding tax is estimated from available information.

Adjustments are made to conform with the audit of your Federal income tax returns. Information on file shows Federal adjustments were made in the amounts of \$4,250.00 in F/Y/E 6/30/71 and \$4,520.00 in F/Y/E 6/30/72.

Since your returns are filed on a fiscal year basis, your tax and tax surcharge is computed on the basis of the effective rate applicable for fiscal years ending in 1972 and 1973.

Section 685(a)(1) and (2) penalties are asserted for failure to file returns on the due date of filing which is 3½ months after the close of your fiscal year.

	<u>F/Y/E</u> <u>6/30/71</u>	<u>F/Y/E</u> <u>6/30/72</u>	<u>F/Y/E</u> <u>6/30/73</u>
Revised wage income	\$19,759.92	\$20,433.80	\$20,829.96
Reported wage income	11,595.00	14,095.00	15,096.00
Additional wage income	\$ 8,164.92	\$ 6,338.00	\$ 5,733.96
Federal adjustments	4,250.00	4,520.00	-0-
Total additional income	\$12,414.92	\$10,858.80	\$ 5,773.96
Reported taxable income	14,462.00	23,532.60	16,783.00
Corrected taxable income	\$26,876.92	\$34,391.40	\$22,516.96
 Total tax	 \$ 2,322.77	 \$ 3,414.32	 \$ 1,717.20
Tax surcharge	-0-	43.03	21.60
Total	\$ 2,322.77	\$ 3,457.35	\$ 1,738.80
Statutory credit	12.50	12.50	-0-
Tax due	\$ 2,310.27	\$ 3,444.85	\$ 1,738.80
Revised tax withheld	466.68	472.90	510.25
Net tax due	\$ 1,843.59	\$ 2,971.95	\$ 1,228.55

Tax computed on returns	\$ 799.08	\$ 1,900.90	\$ 1,038.30	
Reported tax withheld	<u>472.90</u>	<u>510.25</u>	<u>722.01</u>	
Net tax paid with return	\$ 326.18	\$ 1,390.65	\$ 316.29	
PERSONAL INCOME TAX DUE	\$ 1,517.41	\$ 1,581.30	\$ 912.26	\$ 4,010.97
Section 685(a)(1) and (2) Penalties				516.88
			Interest	<u>637.05</u>
			Total Due	\$ 5,164.90"

5. Petitioner contended that the changes to his federal deductions for fiscal years ending June 30, 1971 and 1972 were as a result of his failure to contest same before the Internal Revenue Service ("IRS"). He further contended, however, that subsequent to these federal adjustments he filed a claim for refund with IRS approximately two or three years preceeding the formal hearing, herein, and he had not received a determination of same. Notwithstanding these allegations, the petitioner has failed to submit any creditable evidence in support of his contention that the federal claim is pending or that he has taken any affirmative action in resolution of same.

6. Petitioner failed to show the federal findings were incorrect.

7. Petitioner also stipulated:

"that the contest as to the years 1971 and '72 will not be decided at this hearing, either, and that the taxpayer will resort to whatever adjustment is made in his claim with the Internal Revenue Service for a refund as far as whatever he may have paid to the State; and that the only issues left at this hearing are the deductions claimed for the year 1973 and the penalties for all of the years in question, except for 1969." (See: page 24 of the transcript of the hearing, herein.)

8. The Audit Division did not disallow any deductions for 1973.

9. Petitioner stated that the additional wage income was not reportable because it consisted of payments to a tax deferred annuity. Petitioner submitted wage and tax statements from the City of New York Board of Higher Education for 1969 through 1973. The wage and tax statements showed wages of \$16,345.58 for 1969, \$10,076.75 for 1970, \$13,929.12 for 1971, \$14,251.79 for 1972 and

\$16,760.94 for 1973. Petitioner also submitted an acknowledgement of salary reduction agreement and enrollment request from Teachers' Retirement System - City of New York. The form acknowledged that he had enrolled in the tax deferred annuity program and that a reduction would be made in his monthly salary beginning on February 1, 1970.

10. Petitioner maintained that in an audit, for a year other than any of the foregoing, the Audit Division did not find objection to his method of filing his return on or before the fifteenth day of the fourth month following the close of the calendar year. However, petitioner did not indicate on his New York income tax returns at issue that he was on a fiscal year.

CONCLUSIONS OF LAW

A. That section 659 of the Tax Law required the petitioner to report to the State Tax Commission any change to his taxable income within ninety days after final determination of such change.

B. That the petitioner failed to advise the State Tax Commission that the Internal Revenue Service had made adjustments to his tax returns for the fiscal years ending June 30, 1971 and 1972.

C. That petitioner's reduction in his wages consisted of payments to a tax deferred annuity and were not reportable as part of his gross wages in accordance with section 403(b) of the Internal Revenue Code and sections 1.403(b)-1(b)(3) of the Treasury Regulations. The Audit Division is directed to delete the additional wages income adjustment shown on the Notice of Deficiency dated March 13, 1975.

D. That the New York personal income tax, like the Federal income tax, is computed on the basis of taxable income for each taxable year. "The taxable year of every taxpayer required to make a personal income tax return under Article 22, whether resident...must be the same as his...taxable year for

Federal income tax purposes. The taxable year may be a calendar year or a fiscal year consisting of 12 consecutive months." 20 NYCRR 101-1.1(a). Since petitioner filed his Federal income tax return on a fiscal year basis, he is required to file his New York income tax returns on the same fiscal year basis.

E. That section 651(a) of the Tax Law required the petitioner to file an income tax return on or before the fifteenth day of the fourth month following the close of his taxable year.

F. That section 685(a)(1) of the Tax Law provides in part as follows:

"Section 685. Additions to tax and civil penalties
(a)(1) Failure to file a tax return under this article on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate..."

G. That petitioner's failure to file his 1971, 1972 and 1973 income tax returns on or before the fifteenth day of the fourth month following the close of his respective taxable years was without reasonable cause.

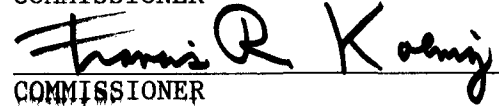
H. That the petition for the Notice of Deficiency dated July 31, 1972 is withdrawn and the tax due is sustained as provided in Finding of Fact "3" supra. That the petition for the Notice of Deficiency dated March 13, 1975 is granted to the extent provided in Conclusion of Law "C", supra. that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
JAN 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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Sworn to before me this
6th day of March, 1981.

Carrie P. Haglund

J. Vredenburg

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Q. S.

Murray N. Friedman
575 Ocean Ave.
New York, NY 10018

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Backsign attached

March 6, 1981

520 n/k

