

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Emil & Frieda Horowitz :

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. :

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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Emil & Frieda Horowitz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Emil & Frieda Horowitz
4270 N.W. 40th St.
Garnet Bldg., Apt. 411
Lauderdale Lakes, FL 33319

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
9th day of January, 1981.

Cornie G. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Emil & Frieda Horowitz :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Daniel A. Taub 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. Daniel A. Taub
3000 Marcus Ave.
Lake Success, NY

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
9th day of January, 1981.

Conce A. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Emil & Frieda Horowitz :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
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Mr. Daniel A. Taub
3000 Marcus Ave.
Lake Success, NY

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
9th day of January, 1981.

Annie G. Hagelund

J. Vredenburg

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

January 9, 1981

Emil & Frieda Horowitz
4270 N.W. 40th St.
Garnet Bldg., Apt. 411
Lauderdale Lakes, FL 33319

Dear Mr. & Mrs. Horowitz:

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
Daniel A. Taub
3000 Marcus Ave.
Lake Success, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EMIL HOROWITZ and FRIEDA HOROWITZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Tax under Articles 22 and 23 of the	:	
Tax Law for the Years 1972 and 1973.	:	

Petitioners, Emil Horowitz and Frieda Horowitz, 4270 N.W. 40th Street, Garnet Building Apt. 411, Lauderdale Lakes, Florida 33319, 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 and 1973 (File No. 14932).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 18, 1977 at 1:30 P.M. Petitioners appeared by Daniel A. Taub, CPA. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the Notice of Deficiency sent petitioners for personal income tax for 1972 and 1973 and the Notice of Deficiency sent Emil Horowitz for unincorporated business tax for those same years, both of which were based primarily on petitioners' failure to substantiate figures utilized in their returns, should be sustained.

FINDINGS OF FACT

1. Petitioners, Emil Horowitz and Frieda Horowitz, filed New York State resident returns for 1972 and 1973. Attached thereto were the New York State

unincorporated business tax computations (Form IT-202) for those years. Petitioners paid personal income tax of \$5,434.00 and \$12,175.00 for 1972 and 1973, respectively. Petitioner Emil Horowitz paid unincorporated business tax of \$2,452.00 and \$4,879.00 for those same years.

2. On April 12, 1976, a Notice of Deficiency was issued to petitioners for personal income tax, stating a deficiency of \$32,375.79, plus interest of \$7,264.48, for a total of \$39,640.27 for 1972, and a deficiency of \$31,974.10, plus penalty of \$333.06 and interest of \$4,776.29, for a total of \$37,083.45 for 1973. The basis for the notice was the disallowance of unsubstantiated purchases of \$200,000.00, unsubstantiated "sales promotion" of \$3,210.00, unsubstantiated loss of \$5,264.00, New York City unincorporated business of \$1,857.00, unsubstantiated itemized deductions of \$2,244.00 and the allowance of a standard deduction of \$2,000.00, for a net adjustment of \$210,575.00 for 1972. There were adjustments of \$200,000.00, \$2,689.00, \$6,603.00, \$3,696.00, \$2,170.00 and \$2,000.00 in the same categories, for a net adjustment of \$213,158.00 for 1973. A Notice of Deficiency dated April 12, 1976 was issued to petitioner Emil Horowitz for unincorporated business tax stating a deficiency of \$11,176.12, plus interest of \$2,507.70, for a total of \$13,683.82 for 1972, and a deficiency of \$11,147.67, plus interest of \$1,665.24, for a total of \$12,812.91. The net adjustments for unincorporated business tax for the two years in question totaled \$203,210.00 and \$202,689.00, respectively, using the figures for unsubstantiated purchases and "sales promotions". The penalty of \$333.06 in 1973 was for underpayment of estimated tax.

3. Petitioners' records were not available to the Audit Division at the time of the computation of the deficiency, nor would petitioners consent to extending the time for assessment.

4. Petitioner concedes the correctness of the adjustments for New York City unincorporated business tax (1972 - \$1,857.00, 1973 - \$3,696.00), unsubstantiated itemized deductions (1972 - \$2,244.00, 1973 - \$2,170.00), allowance of standard deduction for each year and the correctness of the penalty of \$333.06 for underpayment of estimated tax.

5. By checks and invoices, petitioner substantiated the purchases in 1972 and in 1973.

6. Petitioner presented checks in support of "sales promotions", which term was stated to include travel and entertainment as well as gifts to sales people. The checks totaled \$4,636.73 and \$3,967.00 for 1972 and 1973, respectively. Most of the checks were drawn to neighborhood restaurants and to the Diner's Club. A number of the checks were drawn to travel agencies, fuel companies and liquor stores. Petitioner did not submit a diary, an explanation as to business purpose of expense or a list of individuals entertained.

7. Petitioner claimed a loss based on an interest in a partnership (Poets Acres Farm) in 1972 of \$5,264.00. No partnership return was submitted to show how the loss was computed. Petitioner also claimed a partnership loss of \$4,383.00 and an involuntary conversion loss of \$2,220.00 in 1973, which losses were reported on schedules E & R of Federal form 1040 and form 4797. Petitioner submitted a partnership return showing how the loss was computed. The involuntary conversion loss was a capital loss occasioned by the loss of a mare and foal in a fire in August of 1972, plus the death of another horse due to swamp fever in July of 1973. The partnership, which was formed on September 1, 1972, showed that the mare was acquired for \$3,600.00 on September 1, 1972 and the other horse for \$840.00, on September 1, 1972, for a total of \$4,440.00. Minimal insurance was indicated, but no specific evidence as to the amount was adduced. Petitioner proffered invoices of \$906.10 in expenses connected with racing activities for

1972. However, said invoices appeared to relate to Poet Acres Farm, source of the invoices were billed in petitioner Emil Horowitz's name not the partnership name and one was dated 1971 which is a year not at issue. No cancelled checks were submitted to verify payment of the invoices.

CONCLUSIONS OF LAW

A. That petitioner has substantiated all of the purchases disallowed.

B. That the adjustment for unsubstantiated "sales promotion" expenses is sustained. Petitioner failed to comply with the record requirements of section 274 of the Internal Revenue Code to show that the expenses were directly related to his business.

C. That the losses disallowed as unsubstantiated are sustained for 1972 and 1973. Petitioner has not met his burden of proof as imposed by section 689(e) of the Tax Law.

D. That the petition of Emil Horowitz and Frieda Horowitz is granted to the extent indicated in Conclusions of Law "A", above; that the Audit Division is hereby directed to accordingly modify the notices of deficiency issued April 12, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER