

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard & Jeanne Lieb :
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 Years :
1974 & 1975.

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Richard & Jeanne Lieb, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

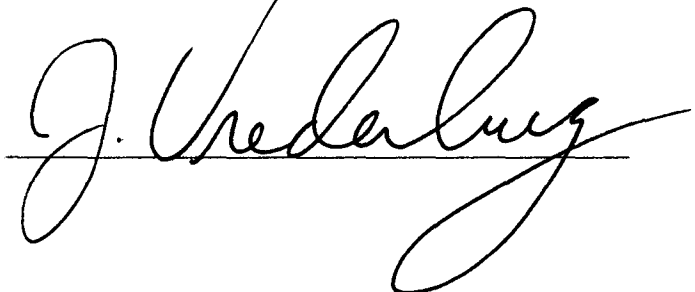
Richard & Jeanne Lieb
90 Marion Ave.
Merrick, NY 11566

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
20th day of November, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard & Jeanne Lieb :
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 Years :
1974 & 1975.

State of New York
County of Albany

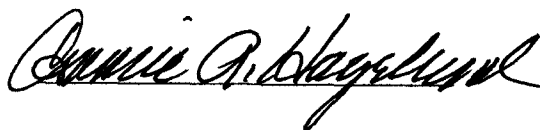
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of November, 1981, he served the within notice of Decision by certified mail upon Charles H. Levey the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

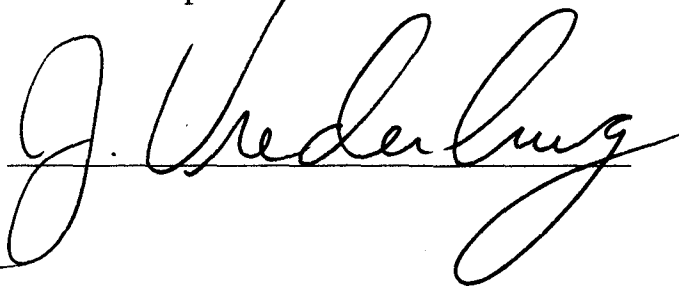
Charles H. Levey
Levey, Fishbane & Abrams
515 Madison Ave.
New York, NY 10019

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
20th day of November, 1981.





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

November 20, 1981

Richard & Jeanne Lieb
90 Marion Ave.
Merrick, NY 11566

Dear Mr. & Mrs. Lieb:

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
Charles H. Levey
Levey, Fishbane & Abrams
515 Madison Ave.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD LIEB and JEANNE LIEB	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 and 1975.	:	

Petitioners, Richard Lieb and Jeanne Lieb, 90 Marion Avenue, Merrick, New York 11566, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1974 and 1975 (File No. 24543).

A small claims hearing was scheduled at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 5, 1981 at 2:45 P.M. However, on May 29, 1981 petitioners' representative Charles H. Levey informed the State Tax Commission, in writing, that the small claims hearing was waived and that based on the entire record contained in the file the case was being submitted to the State Tax Commission. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether petitioner Richard Lieb's share of unincorporated business taxes imposed by the City of New York on the partnership of Kronish, Lieb, Shainswit, Weiner and Hellman, of which petitioner is a member partner, is an "income tax" and therefore is required to be added to federal adjusted gross income in arriving at total New York income.

FINDINGS OF FACT

1. Petitioners filed on June 17, 1975 a 1974 New York State Income Tax Resident Return. On June 14, 1976 petitioners filed a 1975 New York State Income Tax Resident Return. Each return was filed within the extended due date granted.

2. During the period in issue petitioner Richard Lieb was a partner in the law firm of Kronish, Lieb, Shainswit, Weiner and Hellman.

3. On January 16, 1978, the Audit Division issued a Notice of Deficiency against the petitioners imposing tax due of \$1,913.63, plus interest for the years 1974 and 1975 together with an explanatory Statement of Audit Changes which indicated the following:

"Unincorporated business taxes imposed by New York City are not deductible in determining personal income tax. On your personal income tax return you failed to increase your Federal income by the amounts shown below which represent your share of the New York City unincorporated business tax deduction taken on the partnership return of Kronish, Lieb, et al."

4. Notice and demands were issued on April 24, 1978 for each year to assess the personal income tax computed to be due. As a petition was filed on April 12, 1978, these notices are therefore considered to be premature.

5. The Audit Division determined the additional personal income tax due of \$976.05 for 1974 and \$937.58 for 1975 on the basis that pursuant to section 612(b)(3) of the Tax Law petitioners failed to modify their federal adjusted gross income by the amounts (\$6,507.00 for 1974 and \$6,098.00 for 1975) representing petitioner Richard Lieb's share of the aforementioned New York City unincorporated business tax deductions.

6. The petitioners argue that section 612(b)(3) of the Tax Law does not include New York City unincorporated business taxes as such taxes are not "income taxes" but rather a privilege or excise tax. Accordingly, no modification is required.

CONCLUSIONS OF LAW

A. That the New York City unincorporated business tax is an "income tax" pursuant to chapter 46, title S of the Administrative Code of the City of New York.

B. That pursuant to section 612(b)(3) of the Tax Law and 20 NYCRR 116.2(c), the amounts representing petitioner Richard Lieb's distributive share of the New York City unincorporated business tax deduction taken on the partnership return of Kronish, Lieb, Shainswit, Weiner and Hellman must be added to federal adjusted gross income when determining total New York income.


C. That the petition of Richard Lieb and Jeanne Lieb is denied and the Notice of Deficiency dated January 16, 1978 is sustained together with such additional interest as may be lawfully owing.

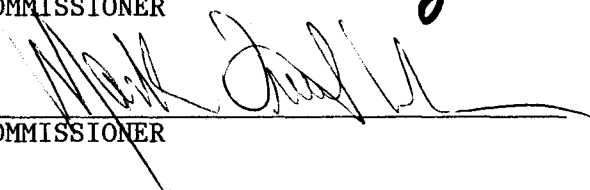
DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER