

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estates of Pauline & Sidney Oberstein :
c/o Leonard Altschul, Executor :
: AFFIDAVIT OF MAILING
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 1972-1975. :

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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Estates of Pauline & Sidney Oberstein, c/o Leonard Altschul, Executor the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estates of Pauline & Sidney Oberstein
c/o Leonard Altschul, Executor
63 Sherwood Ave.
Englewood Cliffs, NY

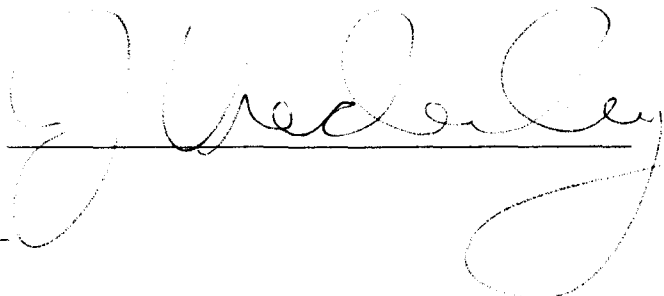
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
27th day of November, 1981.



Bonnie A. Hayland



Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estates of Pauline & Sidney Oberstein :
c/o Leonard Altschul, Executor :
: AFFIDAVIT OF MAILING
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 1972-1975.

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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Leonard Altschul the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

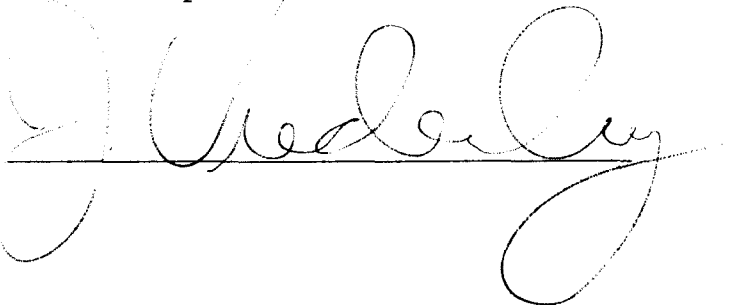
Leonard Altschul
11 Park Place
New York, NY 10007

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
27th day of November, 1981.


Annie P. Hapland


Jay Vredenburg

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

November 27, 1981

Estates of Pauline & Sidney Oberstein
c/o Leonard Altschul, Executor
63 Sherwood Ave.
Englewood Cliffs, NY

Dear Mr. Altschul:

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
Leonard Altschul
11 Park Place
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATES OF PAULINE AND SIDNEY OBERSTEIN	:	DECISION
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 through 1975.	:	

Petitioners, the Estates of Pauline and Sidney Oberstein, c/o Leonard Altschul, Executor, 11 Park Place, New York, New York 10007, 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 through 1975 (File No. 19159).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 29, 1979 at 2:45 P.M. Petitioner appeared by Leonard Altschul, Esq. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron and Irving Atkins, Esqs., of counsel).

ISSUES

I. Whether \$17,965 in cash and \$75,000 in bearer bonds, inventoried in the opening on September 16, 1975, of the safe deposit box in the name of the decedent Pauline Oberstein may be deemed additional taxable income in the year of discovery.

II. Whether petitioners have explained satisfactorily the large checking and savings account deposits and the large savings account appreciation as measured by interest earned, thereby carrying their burden of proof that

the Notice of Deficiency and Demand and the underlying Statement of Audit Changes are incorrect.

III. Whether reasonable cause exists for waiving any penalties.

FINDINGS OF FACT

1. Petitioners, the Estates of Pauline and Sidney Oberstein, Leonard Altschul, Executor, received from the Audit Division a Notice of Deficiency dated March 28, 1977, with a Statement of Audit Changes for personal income taxes due for the years 1972 through 1975 in the amount of \$71,615.13 and for unincorporated business taxes in the amount of \$26,973.60 for the same years, a total of \$98,588.73.
2. No issue of fraud has been raised at any stage of the matter.
3. Sidney Oberstein operated and owned an electrical repair business. He died on or about February 28, 1973.
4. Pauline Oberstein, Sidney Oberstein's wife, was a real estate operator. She died on or about February 1, 1975.
5. On September 16, 1975, a safe deposit box, number 1560, belonging to Pauline Oberstein at the Williamsburg Savings Bank, 93-01 63rd Drive, Rego Park, New York was opened by the Miscellaneous Tax Bureau, Estate Tax Section. An inventory of that box on that date listed \$17,965 in cash and bearer bonds totaling \$75,000. The cash and bonds were deemed to be unreported income.
6. Petitioners did not adduce evidence showing that the cash and bonds found in the safe deposit box were in fact savings from income already reported.
7. Following the opening of the safe deposit box, it was ascertained that no tax returns for Sidney or Pauline Oberstein had been filed for the years 1972 through 1975, which returns were subsequently filed.

8. The 1972 tax return showed interest income of \$2,862.

9. The 1973 tax return showed interest income of \$8,551, an increase of \$5,689, which, at the then prevailing rate of interest showed a capital appreciation in 1973 of approximately \$100,000 against a reported basic income of \$7,546.

10. Checking account deposits in the name of Oberstein for the years 1972 through 1975 total approximately \$312,000. Savings account deposits in those same years exceeded \$111,000. Neither of these deposit totals includes the safe deposit box inventory detailed in Finding of Fact "5".

11. The total of checking plus savings deposits in each year was adjusted downward by the appropriate standard deduction and personal services unincorporated business income exemption for each year involved, and the taxes due calculated, which totaled the amount set forth in Finding of Fact "1".

12. Petitioners offered no evidence at the hearing and engaged in cross-examination of a generally speculative nature.

13. Petitioners' counsel, given an opportunity to offer supplemental hearing evidence in the form of a "certified audit", provided a document as to which its preparer said: "It is less in scope than an examination in accordance with generally accepted standards. The objective of which is the expression of an opinion regarding the financial records taken as a whole. [Sic.]. Accordingly, I do not express such an opinion."

14. Petitioners did not adduce any satisfactory reason for the failure to file tax returns for the years 1972 through 1975 when due.

CONCLUSIONS OF LAW

A. That petitioners, the Estates of Pauline and Sidney Oberstein, Leonard Altschul, Executor, were duly notified of a deficiency in personal and unincorporated business taxes for the years 1972 through 1975.

B. That the Notice of Deficiency being received, in evidence, jurisdiction in this matter was established.

C. That there being no fraud asserted, the burden of proof in this matter was upon petitioners.

D. That Findings of Fact "5" through "12" render the Notice of Deficiency and the Statement of Audit Changes reasonable.

E. That the hearing record and Finding of Fact "13" demonstrate that petitioners, as to each deficiency asserted, wholly failed to sustain their burdens of proof.

F. That petitioners failed to establish any basis for the waiver of any penalty. Accordingly, the deficiencies are sustained, with penalties and interest to the date of payment.

DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER