

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Nathaniel Simonson :
and Estate of Charlotte Simonson :
: 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 :
1970, 1972, 1973. :

State of New York
County of Albany

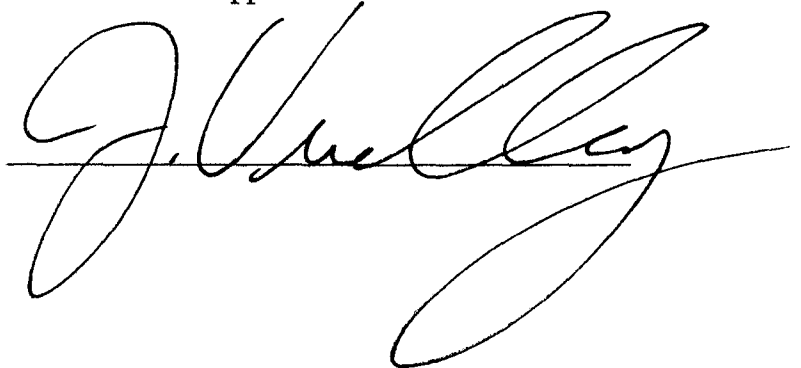
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Estate of Nathaniel Simonson, and Estate of Charlotte Simonson the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Nathaniel Simonson
and Estate of Charlotte Simonson
Ernest Geiger, Exec. & Renee Murray, Admin.
c/o Stephen Abrams, 304 W. 58th St.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

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



A large, stylized handwritten signature, likely of Jay Vredenburg, is written over a horizontal line.

STATE OF NEW YORK
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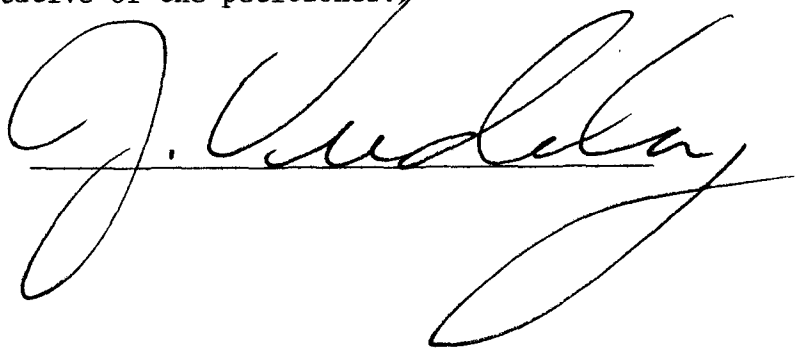
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Stephen R. Abrams the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen R. Abrams
Schneider & Abrams
304 W. 58th St.
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
6th day of November, 1981.



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

November 6, 1981

Estate of Nathaniel Simonson
and Estate of Charlotte Simonson
Ernest Geiger, Exec. & Renee Murray, Admin.
c/o Stephen Abrams, 304 W. 58th St.
New York, NY 10019

To the Executors:

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
Stephen R. Abrams
Schneider & Abrams
304 W. 58th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATE OF NATHANIEL SIMONSON	:	DECISION
and ESTATE OF CHARLOTTE SIMONSON	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income tax under Article 22	:	
of the Tax Law for the Years 1970, 1972 and	:	
1973.	:	

Petitioners, Estate of Nathaniel Simonson, Ernest Geiger, Executor and Estate of Charlotte Simonson, Renee Murray, Administratrix, respectively, c/o Stephen R. Abrams, CPA, 304 West 58th Street, New York, New York 10019, 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 1970, 1972 and 1973 (File No. 15984).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 7, 1981 at 1:30 P.M. Petitioners appeared by Stephen R. Abrams, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the "source and application of funds" method accurately reflected petitioners' income for 1970 and 1972.

II. Whether the cash found in petitioner Charlotte Simonson's safe deposit box represented unreported income for the year 1973.

FINDINGS OF FACT

1. Petitioners timely filed New York State income tax resident returns for the years 1970, 1972 and 1973, on each of which they stated their home address was 146 Central Park West, New York, New York 10023. A copy of Federal form 2688, "Application for Extension of Time to File" was attached to their New York State income tax return for 1973 showing that their request for an extension of time was granted until October 15, 1974.

2. Successive consents were executed extending the period of limitation upon assessment of personal income and unincorporated business taxes for the years 1970 and 1971, until April 15, 1977 beginning on January 28, 1974 and ending with consent validated on February 18, 1976.

3. On July 26, 1976, the Audit Division issued, against petitioners, a Statement of Audit Changes and a Notice of Deficiency imposing additional income tax liabilities for the taxable years 1970, 1972 and 1973 as follows:

<u>YEARS</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1970	\$2,100.00	\$ 665.28	\$2,765.28
1972	745.68	183.41	929.09
1973	3,465.00	592.38	4,057.38
TOTAL	\$6,310.68	\$1,441.07	\$7,751.75

4. The tax deficiency was computed as follows:

Tax Year or Period Ended	1970	1972	1973
Type of Return	IT-201	IT-208(H)	IT-201
PERSONAL INCOME			
Net adjustment per audit	\$ 15,000.00	\$ 4,850.00	\$ 23,100.00
Taxable income previously stated	146,391.00	133,607.00	91,000.00
Corrected taxable income	161,391.00	138,457.00	114,100.00
Tax on corrected taxable income	21,154.74	19,078.55	15,425.00
Less statutory credit	25.00		
2½% Surcharge		476.95	
Corrected tax due	21,129.74	19,555.51	15,425.00
Tax previously computed	19,029.74	18,809.83	11,960.00
Deficiency	\$ 2,100.00	\$ 745.68	\$ 3,465.00

5. The basis of the adjustment is explained as follows:

1970	Additional Funds Needed for Living Expenses	\$15,000.00
	Total Adjustment	<u>\$15,000.00</u>
1972	Additional Funds Needed for Living Expenses	\$ 4,850.00
	Total Adjustment	<u>\$ 4,850.00</u>
1973	Cash Found in Vault Deemed to be Additional Income	\$23,100.00
	Total Adjustment	<u>\$23,100.00</u>

6. Petitioner Charlotte Simonson, at the time of her death and at all times in issue herein, was unemployed. She died April 11, 1973.

7. Petitioner Nathaniel Simonson, at the time of his death on or about March 29, 1973, was employed as President of Fashion Center Building, 525 Seventh Avenue, New York City. Evidence also reflected that sometime prior to his death he was a partner in the stock brokerage partnership of Cohen, Simonson which subsequently became Cohen, Simonson & Rea.

8. At a later date the aforementioned partnership was dissolved and its assets were transferred to Cohen, Simonson & Rea, Inc. Petitioner Nathaniel Simonson did not become a stockholder of the corporation.

9. In defense against the Audit Division's asserted tax deficiencies for the years 1970 and 1972 the petitioners' representative offered in evidence Forms 1099 -- U.S. Information Returns, issued by Cohen, Simonson & Rea, Inc., for the calendar years 1970 and 1972 (petitioners' Exhibits 2 and 3). The 1099 for 1970 reported interest in the sum of \$58,683.82 and the 1099 for 1972 reported interest in the sum of \$48,666.64; the sums for both years were payable to petitioner Nathaniel Simonson. Supposedly, interest at the rate of 8 percent was paid on petitioner Nathaniel Simonson's subordinated debenture bond with Cohen, Simonson & Rea.

10. Petitioners' representative maintained that the difference in the aforementioned interest amounts was caused by petitioner Nathaniel Simonson

drawing down \$125,000.00 of the principal of the aforementioned debenture. The petitioners' representative did not offer any direct proof that petitioner Nathaniel Simonson did in fact effectuate the draw down.

11. In further defense against the 1970 deficiency, petitioners' representative claimed that the Audit Division had not given petitioners consideration for \$10,018.27 representing the proceeds from the sale, May 6, 1970, of 600 shares of Freeport Sulphur stock in the account of Charlotte Simonson. The auditor, however, showed, to the satisfaction of petitioners' representative, that consideration had been given to said amount.

12. In defense against the 1973 tax deficiency based on \$23,100.00 in cash found in petitioner Charlotte Simonson's safe deposit box, petitioners' representative testified as follows:

"[he] would like to...present in Evidence copies of cancelled checks, eleven cancelled checks that...[were]...payable to Henrietta Simonson, from three banks: Central Savings Bank; Union Dime Savings Bank; and Bowery Savings Bank; all dated August 21 or August 22, 1972; all payable to the order of Henrietta Simonson, and most of them endorsed, "Pay to the order of Charlotte Simonson"; with teller indications that \$24,000 in checks endorsed to the order of Charlotte Simonson were, in fact, turned into cash." (Petitioners' Exhibit 4.)

The checks totaled \$48,000.00 and were proceeds of Henrietta Simonson's closed out bank accounts. The total proceeds were given to petitioner Charlotte Simonson. Petitioner Charlotte Simonson used approximately \$24,000.00 to purchase a cooperative apartment for Henrietta Simonson and the balance (\$23,100.00) was kept in her safe deposit box for Henrietta Simonson's use and benefit.

13. Henrietta Simonson was petitioner Nathaniel Simonson's mother.

CONCLUSIONS OF LAW

A. That petitioners failed to sustain the burden of proof imposed by section 689(e) of the Tax Law for the tax years 1970 and 1972; however, they did sustain the burden of proof for the tax year 1973.

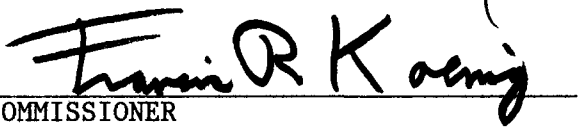
B. That in view of the foregoing, the petition herein is denied to the extent that it pertains to the years 1970 and 1972 and the Notice of Deficiency as it pertains thereto is sustained; and that the petition herein is granted to the extent that it pertains to the year 1973 and the Notice of Deficiency as it pertains thereto is cancelled.

DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER