

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Maurice Edelstein, Trust :

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 :  
1967 - 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 30th day of April, 1982, he served the within notice of Decision by certified mail upon Maurice Edelstein, Trust, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maurice Edelstein, Trust  
c/o Marvin Edelstein  
275 Madison Ave.  
New York, 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  
30th day of April, 1982.

*Carrie A. Blagden*

*Jay J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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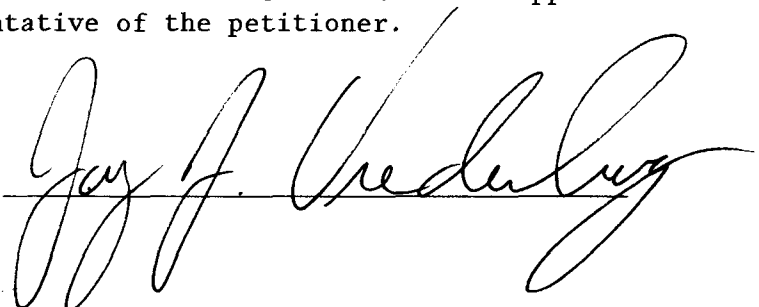

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of April, 1982, he served the within notice of Decision by certified mail upon Richard Schrier, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard Schrier  
663 5th Ave., 6th Fl.  
New York, NY 10022

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 April, 1982.

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

April 30, 1982

Maurice Edelstein, Trust  
c/o Marvin Edelstein  
275 Madison Ave.  
New York, NY

Dear Mr. Edelstein:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Richard Schrier  
663 5th Ave., 6th Fl.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MAURICE EDELSTEIN TRUST	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1967 through 1973.	:	

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Petitioner, Maurice Edelstein Trust, c/o Marvin Edelstein, 275 Madison Avenue, New York, New York 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 1967 through 1973 (File No. 23784).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on Tuesday, April 28, 1981 at 1:15 P.M. Petitioner appeared by Richard Schrier, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the Maurice Edelstein Trust had income in addition to that acquired from the Edelstein Brothers Partnership during the years 1967 through 1973.

FINDINGS OF FACT

1. Petitioner, Maurice Edelstein Trust, failed to file New York State Income Tax Fiduciary Returns for the years 1967 through 1973.

2. On December 10, 1975 the Audit Division issued a Statement of Audit Changes for the years 1967 through 1973 which asserted a deficiency against petitioners based upon petitioner's distributive share of income from the

Edelstein Brothers Partnership, New York State partnership modifications, net gain pursuant to section 1231 of the Internal Revenue Code, and "Additional Estimated Other Income". Accordingly, on May 23, 1977 the Audit Division issued a Notice of Deficiency for the years 1967 through 1973 asserting a deficiency of \$11,178.50 plus interest of \$4,057.73 for a total of \$15,236.23.

3. In a letter dated August 16, 1977, Joseph D. Laveman, C.P.A., on behalf of petitioners, provided a worksheet detailing income and deduction information of the Maurice Edelstein Trust for the years 1967 through 1973. The information provided by Mr. Laveman as to the income of the Maurice Edelstein Trust was identical to that shown in the Statement of Audit Changes dated December 10, 1975 except for the estimated income. (The worksheet and letter also indicated that the Maurice Edelstein Trust made a distribution to a beneficiary. Said distribution, however, does not appear to be at issue.)

4. Maurice Edelstein died testate. The fifth clause of his will provided, in part:

"FIFTH: The entire interest owned by me at my death in the partnership business known and described as Edelstein Bros., or any other partnership carrying on substantially the same business, I bequeath and devise unto my Trustee, hereinafter named, to be held by him in trust nevertheless subject to the following conditions and for the following purposes:

(a) I direct my Executor and Trustee to retain my said interest in Edelstein Bros. as a limited partnership interest and to notify the surviving partners of my said business within three (3) months after my decease of his intention to retain said interest in the business as a limited partnership investment.

(b) To pay the net income from this business or such other assets as may constitute all or part of the trust principal to my wife, ROSE EDELSTEIN, for her life."

5. The record does not reveal the basis upon which the Audit Division concluded that petitioner had estimated income.

CONCLUSIONS OF LAW

A. That petitioner has admitted that it has received distributions from the Edelstein Brothers Partnership in the amounts and for the years asserted in the Statement of Audit Changes dated December 10, 1975 and incorporated in the Notice of Deficiency dated May 23, 1977.

B. That Tax Law §681(a) provides, in part, that "[i]f a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer." However, the estimation of New York taxable income must be premised upon a factual basis (see generally Brown v. New York State Tax Comm., 199 Misc. 349, 353-354, aff'd. 279 App. Div. 837, aff'd. 304 N.Y. 651).

C. That since the record does not reveal the basis upon which the Audit Division concluded that petitioner had "Additional Estimated Other Income", the petition of Maurice Edelstein Trust is granted to the extent that the personal income tax attributable to additional estimated other income in the Notice of Deficiency for the years 1967 through 1973 is cancelled; that the Audit Division is hereby directed to modify the Notice of Deficiency issued on May 23, 1977; and that, except as so granted, the petition is in all other respects denied.

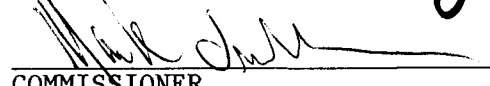
DATED: Albany, New York

APR 30 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER