

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Greco
1204 West Broadway
Hewlett, NY 11557

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.

Kathy Hapfenbach

J. K. Laury

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

State of New York
County of Albany

Robert Goldstein
470 Park Ave. S.
New York, NY 10016

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.

Kathy Pfaffenbach

Phedra

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

January 3, 1983

John Greco
1204 West Broadway
Hewlett, NY 11557

Dear Mr. Greco:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert Goldstein
470 Park Ave. S.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN GRECO	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income and Unincorporated	:	
Business Tax under Articles 22 and 23 of the	:	
Tax Law for the Years 1973, 1974 and 1975.	:	

Petitioner John Greco, 1240 West Broadway, Hewlett, New York 11557, filed a petition for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1973, 1974 and 1975 (File No. 23286).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 16, 1981 at 9:15 A.M. Petitioner John Greco appeared with Robert Goldstein, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether the Notice of Small Claims Hearing, issued under date of May 11, 1981, is defective so as to render any further proceedings null and void.

II. Whether the unincorporated business tax is barred by the statute of limitations.

FINDINGS OF FACT

1. Petitioner John Greco and Patricia Greco, his wife filed a New York State income tax resident return for 1973 on which they computed their tax separately. For 1974 and 1975, petitioner John Greco filed, as single, a New

York State resident return. Petitioner John Greco did not file unincorporated business tax returns for 1973, 1974 and 1975.

2. On January 25, 1978, the Audit Division issued a Statement of Audit Changes to petitioner wherein it adjusted a casualty loss claimed on petitioner's personal income tax return for 1973; and, further, held that the income derived from his activities is subject to unincorporated business tax for 1973, 1974 and 1975. Accordingly, under date of March 24, 1978, it issued a Notice of Deficiency against the petitioner for 1973 asserting unincorporated business tax of \$430.93, less credit for refund on personal income tax of \$200.35, plus penalty and interest of \$99.08 for a total of \$329.66. Under same date, a separate Notice of Deficiency was issued against petitioner for 1974 and 1975 asserting unincorporated business tax of \$1,243.39 plus penalty and interest of \$373.61 for a total of \$1,617.00.

3. At the hearing, petitioner contended that the Notice of Small Claims Hearing was defective in that it failed to comply with section 601.8(c)(4), subsections (B)(C) and (D) of the State Tax Commission Rules of Practice and Procedure and, therefore, any deficiency rendered thereon is null and void.

4. Petitioner further argued that, assuming the Notice of Small Claims Hearing was proper in form, the three year statute of limitation had already run prior to the issuance of the notices of deficiency.

5. The hearing herein was limited in scope only to the jurisdictional issues raised by the petitioner. However, if relief is not granted petitioner on the jurisdictional issue, a second hearing will be granted for the purpose of hearing the substantive issues.

CONCLUSIONS OF LAW

A. That the Notice of Small Claims Hearing incorporates, implicitly or explicitly by reference, the Statement of Audit Changes and notices of deficiency; thereby giving petitioner notice of the legal authority and jurisdiction, a reference to particular statutory provisions involved, where possible, and a short and plain statement of matters asserted pursuant to section 601.8(c)(4), subsections (B), (C) and (D) of the State Tax Commission Rules of Practice and Procedure. Accordingly, the Notice of Small Claims Hearing complied with the State Tax Commission Rules of Practice and Procedure, and petitioner's argument to dismiss for noncompliance is denied.

B. That petitioner did not file unincorporated business tax returns for 1973, 1974 and 1975 and, accordingly, the tax may, therefore, be assessed at any time pursuant to Tax Law sections 722 and 683(c)(1)(A).

C. That the petition of John Greco is denied as it relates to the jurisdictional issues addressed herein and that further proceedings are to be scheduled dealing with the substantive issues.

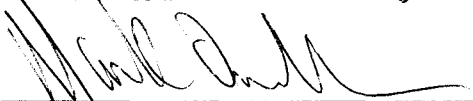
DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER