

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Joseph Hamilton (Dec'd)
and Vivian Hamilton

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 1969 - 1971.

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 17th day of March, 1982, he served the within notice of Decision by certified mail upon Joseph Hamilton (Dec'd), and Vivian Hamilton the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Hamilton (Dec'd)
and Vivian Hamilton
131 Pugsley Ave.
Bronx, NY 10472

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
17th day of March, 1982.

Conne A. Hoggelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph Hamilton (Dec'd) :
and Vivian Hamilton :

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 1969 - 1971 :

State of New York
County of Albany

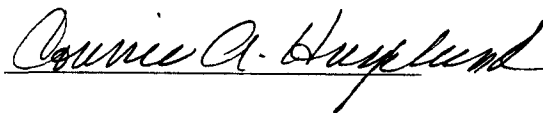
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of March, 1982, he served the within notice of Decision by certified mail upon Jules Bernstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jules Bernstein
10 Fiske Pl.
Mt. Vernon, NY 10550

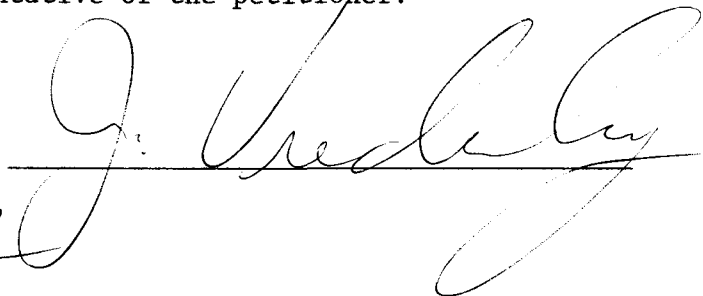
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
17th day of March, 1982.



Connie A. Huppert



Jay Vredenburg

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

March 17, 1982

Joseph Hamilton (Dec'd)
and Vivian Hamilton
131 Pugsley Ave.
Bronx, NY 10472

Dear Mrs. Hamilton:

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
Jules Bernstein
10 Fiske Pl.
Mt. Vernon, NY 10550
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH HAMILTON (DECEASED) and VIVIAN HAMILTON	:	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 Fiscal Years Ended January 31,	:	
1969, January 31, 1970 and January 31, 1971.	:	

Petitioners, Joseph Hamilton (deceased) and Vivian Hamilton, 131 Pugsley Avenue, Bronx, New York 10472, 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 fiscal years ended January 31, 1969, January 31, 1970 and January 31, 1971 (File No. 20567).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 30, 1981 at 9:15 A.M. Petitioners appeared by Jules Bernstein, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners are entitled to a refund of additional tax, penalty and interest paid on an assessment issued by the Audit Division, where said assessment was based solely on the results of an Internal Revenue Service audit of petitioners' Federal income tax returns.

FINDINGS OF FACT

1. Petitioners, Joseph Hamilton (deceased) and Vivian Hamilton, timely filed joint income tax resident returns for the fiscal years ending January 31,

1969, January 31, 1970 and January 31, 1971. On each of said returns petitioners reported business income generated from the operation of a retail liquor store. Petitioners were not required to file unincorporated business tax returns for the years at issue since unincorporated business gross income did not exceed \$10,000.00, nor was there any amount of unincorporated business taxable income.

2. The Internal Revenue Service (hereinafter "IRS") audited petitioners' U. S. individual income tax returns for the fiscal years ending January 31, 1969, January 31, 1970 and January 31, 1971. As the result of said examination, gross receipts from petitioners' retail liquor store were increased by \$10,435.10 for F/Y/E 1/31/69, \$6,822.86 for F/Y/E 1/31/70 and \$2,640.00 for F/Y/E 1/31/71. Additional Federal income tax assessed totaled \$4,434.01, with \$2,383.16 attributable to F/Y/E 1/31/69, \$1,518.47 attributable to F/Y/E 1/31/70 and \$532.38 attributable to F/Y/E 1/31/71. The IRS also asserted a 5 percent negligence penalty.

3. The Audit Division issued to petitioners a Notice of Additional Tax Due dated May 25, 1973 wherein their New York State personal and unincorporated business tax liabilities were recomputed based on the IRS audit findings. A 5 percent negligence penalty was also assessed. Additional tax due totaled \$1,063.97, the 5 percent negligence penalty amounted to \$53.20 and, with interest of \$348.60, the total due came to \$1,465.77.

4. The total tax, penalty and interest due of \$1,465.77 was paid by petitioners on or about May 8, 1975. On December 7, 1976, petitioners filed a claim for refund requesting that the \$1,465.77 be returned since the IRS audit findings did not take into consideration a \$28,100.00 omission in opening merchandise inventory for F/Y/E 1/31/70. Petitioners' claim for refund was denied by the Audit Division via notice dated December 23, 1976.

5. The IRS, through the office of the District Director serving Manhattan, revised its original audit findings and recomputed petitioners' Federal income liability for the years at issue by allowing an opening inventory for F/Y/E 1/31/70 of \$28,100.00. The District Director determined that petitioners owed no additional Federal income tax for the fiscal years ending January 31, 1969 and January 31, 1971 and that \$750.00 of tax was due for the fiscal year ending January 31, 1970.

CONCLUSIONS OF LAW

A. That petitioners' additional New York State personal and unincorporated business tax liability for the years at issue was computed based on the original audit findings of the IRS. That petitioners' liability must be recomputed to take into consideration the recomputation made by the Manhattan District Director as elucidated in Finding of Fact "5", supra.

B. That consistent with the actions of the IRS, it is determined that petitioners owe no additional personal or unincorporated business tax for the fiscal years ending January 31, 1969 and January 31, 1971. That petitioners' additional personal income tax liability for fiscal year ending January 31, 1970 is recomputed to be \$137.61. That the 5 percent negligence penalty is sustained and amounts to \$6.88 and interest, computed at 6 percent per annum from May 15, 1970 to May 8, 1975, totals \$41.28. Total revised tax, penalty and interest due amounts to \$185.77.

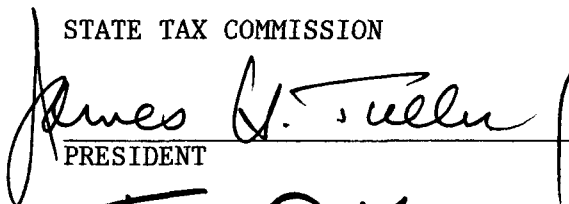
C. That petitioners are entitled to a refund of \$1,280.00 (\$1,465.77 - \$185.77) plus interest computed pursuant to section 688 of the Tax Law.


D. That the petition of Joseph Hamilton (deceased) and Vivian Hamilton is granted to the extent indicated in Conclusions of Law "B" and "C", supra, and that, except as so granted, the petition is in all other respects denied.

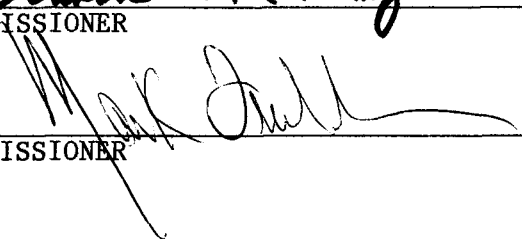
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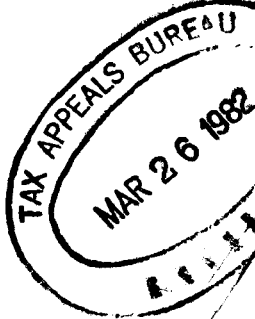
STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Joseph Hamilton (Dec'd)
and Vivian Hamilton
131 Pugsley Ave
Bronx, NY 10472

☐ MOVED, LEFT NO ADDRESS
☐ MOVED, NO NEW ADDRESS
☐ RETURNED TO WRITER
☐ REFUSED
☐ ADDRESS UNKNOWN

BRONX, N
10472

CERTIFIED

P 220 042 289

MAIL

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

March 17, 1982

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131 Pugsley Ave.
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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jules Bernstein
10 Fiske Pl.
Mt. Vernon, NY 10550
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOSEPH HAMILTON (DECEASED) and VIVIAN HAMILTON
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 Fiscal Years Ended January 31,
1969, January 31, 1970 and January 31, 1971.

DECISION

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4. The total tax, penalty and interest due of \$1,465.77 was paid by petitioners on or about May 8, 1975. On December 7, 1976, petitioners filed a claim for refund requesting that the \$1,465.77 be returned since the IRS audit findings did not take into consideration a \$28,100.00 omission in opening merchandise inventory for F/Y/E 1/31/70. Petitioners' claim for refund was denied by the Audit Division via notice dated December 23, 1976.

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CONCLUSIONS OF LAW

A. That petitioners' additional New York State personal and unincorporated business tax liability for the years at issue was computed based on the original audit findings of the IRS. That petitioners' liability must be recomputed to take into consideration the recomputation made by the Manhattan District Director as elucidated in Finding of Fact "5", supra.

B. That consistent with the actions of the IRS, it is determined that petitioners owe no additional personal or unincorporated business tax for the fiscal years ending January 31, 1969 and January 31, 1971. That petitioners' additional personal income tax liability for fiscal year ending January 31, 1970 is recomputed to be \$137.61. That the 5 percent negligence penalty is sustained and amounts to \$6.88 and interest, computed at 6 percent per annum from May 15, 1970 to May 8, 1975, totals \$41.28. Total revised tax, penalty and interest due amounts to \$185.77.

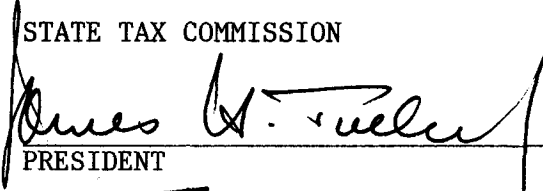
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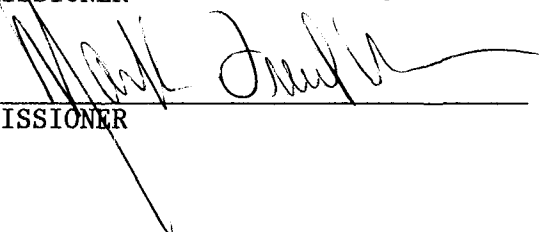
DATED: Albany, New York

MAR 17 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER