

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Nicholas Kontzamanys
and Tassia Kontzamanys :

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, 1973 & 1974.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Nicholas Kontzamanys and Tassia Kontzamanys the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

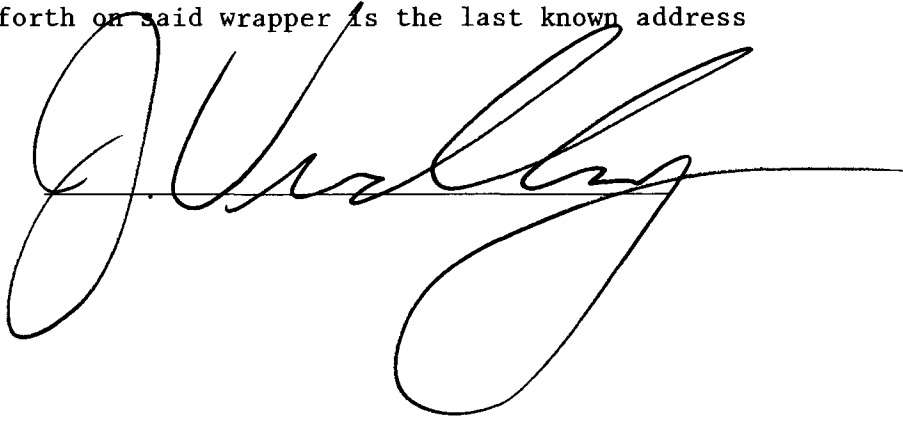
Nicholas Kontzamanys
and Tassia Kontzamanys
250 91st St.
Brooklyn, NY 11209

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
29th day of January, 1982.

Ann D. Haylund



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Nicholas Kontzamanys :
and Tassia Kontzamanys :

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, 1973 & 1974.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon John P. Volandes the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John P. Volandes
James D. Miller & Co.
111 Broadway, Rm. 1300
New York, NY 10006

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
29th day of January, 1982.

Ernie A. Hayelund

J. Vredenburg

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

January 29, 1982

Nicholas Kontzamanys
and Tassia Kontzamanys
250 91st St.
Brooklyn, NY 11209

Dear Mr. & Mrs. Kontzamanys:

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) 722 & 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
John P. Volandes
James D. Miller & Co.
111 Broadway, Rm. 1300
New York, NY 10006
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NICHOLAS KONTZAMANYS	:	
and	:	DECISION
TASSIA KONTZAMANYS	:	
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, 1973 and 1974.	:	

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 25, 1980 at 1:15 P.M. Petitioners appeared by James D. Miller & Co., CPA's (John P. Volandes, CPA). The Income Tax Bureau appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

Whether petitioner Tassia Kontzamanys shall be recognized as a partner for income tax purposes in the proprietorship of petitioner Nicholas Kontzamanys' retail grocery store. Alternatively, if petitioner Tassia Kontzamanys is not recognized as a partner, whether petitioner, Nicholas Kontzamanys shall be allowed as an additional deduction against business income, the value of services rendered by petitioner Tassia Kontzamanys.

FINDINGS OF FACT

1. Petitioners, Nicholas Kontzamanys and Tassia Kontzamanys, filed New York State combined income tax returns (Form IT-208) for subject years, in which they each reported income as "grocers". Petitioners, Nicholas Kontzamanys and Tassia Kontzamanys, filed unincorporated business tax returns for 1973 and 1974, but no such return was filed for 1972.

2. On March 28, 1977, the Audit Division issued a Statement of Audit Changes against petitioner Nicholas Kontzamanys for 1972 on the basis that the income derived from his activities as a grocer was subject to unincorporated business tax. Accordingly, on March 28, 1977, the Audit Division issued a Notice of Deficiency for 1972 in the amount of \$822.09 in unincorporated business tax, penalty of \$382.27 (pursuant to section 685, subsections (a)(1) and (a)(2) of the Tax Law), and interest of \$243.59, for a total of \$1,447.95.

3. On March 28, 1977, the Audit Division issued a Statement of Audit Changes against petitioners, Nicholas Kontzamanys and Tassia Kontzamanys for 1972, 1973 and 1974 on the basis that all income earned from the grocery store is attributable to petitioner Nicholas Kontzamanys and that no part of same is reportable by Tassia Kontzamanys. Accordingly, the Audit Division on March 28, 1977, issued a Notice of Deficiency, based on a reallocation of the income, indicating a deficiency in tax for Nicholas Kontzamanys in the amount of \$2,672.95 and a net overpayment of tax for Tassia Kontzamanys of \$549.53, resulting in a net amount due of \$2,123.42 in personal income tax and interest of \$465.29, for a total due of \$2,588.71.

4. Petitioner Nicholas Kontzamanys stipulated that the operation of a grocery store constituted the carrying on of an unincorporated business. However, he argued that petitioner Tassia Kontzamanys be considered a partner

in the business or, alternatively that an additional deduction be allowed against business income for the value of the services rendered by her.

5. Petitioners contended that, although in form, the business was operated as a sole proprietorship in the name of Nicholas Kontzamanys, in fact the petitioners considered themselves to be "de facto" partners. Their basis for said contention is that the source of the initial capital to commence business was derived from their pooling of savings earned previous to the commencement of business; that the building, in which the grocery store is located, is held by them as joint tenants; and that they "worked together during the working hours each day".

6. Petitioner Tassia Kontzamanys, who had better command of the English language, helped her husband in the operation of the business by dealing with salesmen, deciding what merchandise to purchase, selling merchandise and determining the prices to be charged thereon. This was supported, in part, by memorandums submitted from disinterested third parties.

The income withdrawn from the business by petitioner Nicholas Kontzamanys, not used for living expenses, was alleged by him to have been either deposited to petitioners' joint account and/or used to acquire jointly owned assets: No evidence was adduced at the hearing in support of said allegation.

7. Petitioners filed a report of change in Federal taxable income to the State of New York, Department of Taxation and Finance for 1972 (Form IT-115), resulting in additional personal income tax of \$654.27, plus interest of \$214.81, for a total of \$869.08. Said amount of \$869.08, plus an additional amount of \$29.00, was paid by petitioners under date of February 26, 1977,

which payment was not taken into account by the Audit Division in computation of additional tax due.

CONCLUSIONS OF LAW

A. That petitioners, Nicholas Kontzamanys and Tassia Kontzamanys have failed to meet the burden of proof imposed by section 689(e) of the Tax Law, to show that they intended to form a bona fide business partnership. Although petitioner Tassia Kontzamanys was an important contributor to the business conducted by her husband and was of valuable assistance in the operation of the business, she lacked authority to exercise financial control over its activities nor did she share in its profits and losses.

B. That Article 23 of the Tax Law makes no provision for an unincorporated business deduction for the reasonable value of services rendered by a spouse or other individual unless wages and/or salaries are in fact paid. That the petitioners have failed to meet the burden of proof pursuant to section 689(e) of the Tax Law to show that petitioner Tassia Kontzamanys was paid a salary or wage.

C. That the petition of Nicholas Kontzamanys and Tassia Kontzamanys is granted to the extent determined in Finding of Fact "7" supra. The Audit Division is directed to modify the Notice of Deficiency issued on March 28, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION

James W. Teller
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. [unclear]
COMMISSIONER