

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Maxwell Lazarus : 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 and :
Earnings Tax on Nonresidents under Title U of the :
Administrative Code of City of New York for the :
Year 1976.

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 Maxwell Lazarus, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maxwell Lazarus
1 Wall St.
Ft. Lee, NJ 07024

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.

Armin A. Hagelund

Jay Vredenburg

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

January 29, 1982

Maxwell Lazarus
1 Wall St.
Ft. Lee, NJ 07024

Dear Mr. Lazarus:

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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MAXWELL LAZARUS	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law and Earnings Tax on Nonresidents	:	
under Title U of the Administrative Code of	:	
City of New York for the Year 1976.	:	

Petitioner, Maxwell Lazarus, 1 Wall Street, Fort Lee, New Jersey 07024, 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 and Earnings Tax on Nonresidents under Title U of the Administrative Code of City of New York for the year 1976 (File No. 25868).

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 April 30, 1981 at 1:15 P.M. Petitioner, Maxwell Lazarus, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is entitled to allocate business income generated from his activities as a commercial printing broker to sources within and without the City and State of New York and, if so entitled, has he properly substantiated the respective allocation factors.

FINDINGS OF FACT

1. Petitioner, Maxwell Lazarus, timely filed both a New York State Income Tax Nonresident Return and City of New York Nonresident Earnings Tax Return for

the year 1976 on April 14, 1977. He did not file a New York State unincorporated business tax return for said year.

2. The 1976 New York State Income Tax Nonresident Return filed by petitioner reported total Federal income of \$9,553.00 and allocated approximately 50 percent of said Federal income to New York sources. Page 2 of said return was not completed by petitioner, including Schedule A-2, Allocation of business income to New York State. The amount reported by petitioner as total Federal income of \$9,553.00 actually represents Federal taxable income computed by subtracting itemized deductions of \$3,702.00 and exemptions of \$3,000.00 from adjusted gross income of \$16,255.00.

3. The City of New York Nonresident Earnings Tax Return reported net earnings from self employment of \$5,420.00. Petitioner computed this amount by allocating 33 percent of self employment income of \$16,255.00 to New York City sources. The one-third allocation factor was determined by using the 3 factor formula basis found on Page 2, Schedule B of the New York City return. Petitioner utilized only one of the three factors (gross sales) in arriving at the one-third allocation factor (\$18,159.00 NYC gross sales divided by \$55,047.00 total gross sales).

4. On November 3, 1978, the Audit Division issued to petitioner a Statement of Audit Changes wherein his allocations of business income to sources outside New York State and New York City were disallowed in full. Said business income was deemed taxable in its entirety for personal income tax, unincorporated business tax and New York City nonresident earnings tax purposes. Accordingly, a Notice of Deficiency was issued to petitioner on February 7, 1979 assessing additional New York City nonresident earnings tax of \$92.66 plus interest. A second Notice of Deficiency was issued on March 18, 1981 assessing additional

New York State personal income tax of \$391.90 and additional New York State unincorporated business tax of \$412.80, for a total tax due of \$804.70, together with interest.

5. At the hearing held herein counsel for the Audit Division conceded that the personal income tax due of \$391.90, as assessed in the March 18, 1981 Notice of Deficiency, must be withdrawn since the statute of limitations for assessment had expired prior to the issuance of said notice.

6. During the year at issue petitioner earned income from his activities as a commercial printing broker. The net profit from these activities, as shown on Federal Schedule C, amounted to \$16,255.35. Petitioner maintained an office in New York City at the printing shop of Metropolitan Printing Services, Inc., 655 Avenue of Americas. Said office consisted of a desk (for which petitioner reimbursed Metropolitan \$25.00 per month), a telephone and filing cabinets. Petitioner was responsible for payment of the telephone charges along with the expense for an answering service. The business card utilized by petitioner listed only the New York City address.

7. Petitioner also worked out of an office maintained in his personal residence in New Jersey. This office consisted of a desk, telephone, typewriter and filing cabinets. Business mail was received at both the New York City and New Jersey offices. For the year prior to the year at issue petitioner was a member of the Fort Lee Chamber of Commerce, however, it is not known whether said membership was maintained for the year 1976.

8. Petitioner estimated that one-half of his time was spent in New York while the remaining portion was spent in New Jersey and that approximately one-half of his business income was earned in New York. No documentary or other substantial evidence was adduced to support petitioner's claimed 50

percent allocation factor for State purposes and the claimed one-third allocation factor for City purposes.

CONCLUSIONS OF LAW

A. That pursuant to Finding of Fact "5", supra, the portion of the Notice of Deficiency dated March 18, 1981 relating to the imposition of New York State personal income tax of \$391.90 is cancelled due to the expiration of the statute of limitations for assessment.

B. That although petitioner may have maintained a regular place of business outside New York for income allocation purposes, he has failed to sustain his burden of proof [Tax Law sections 689(e), 722 and Title U section U46-39.0(e)] to substantiate that the allocation factors were computed in accordance with the allocation provisions contained in the law. [Section 632(c) of the Tax Law and 20 NYCRR 131.13, sections 707(b),(c) or (d) of the Tax Law and 20 NYCRR 207.3, 207.4 or 207.5 and sections U46-4.0(b) or (c) of Title U.]

C. That the petition of Maxwell Lazarus is granted to the extent indicated in Conclusions of Law "A" and that, except as so granted, the petition is in all other respects denied.

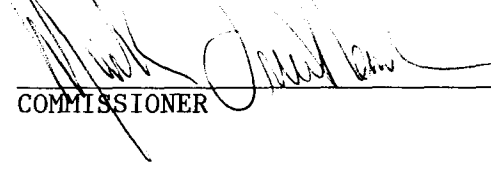
DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER