

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Marvin J. Raskin :
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 1974 & 1976. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

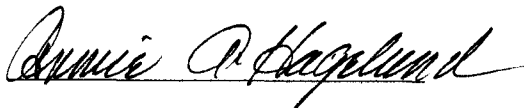
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon Marvin J. Raskin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

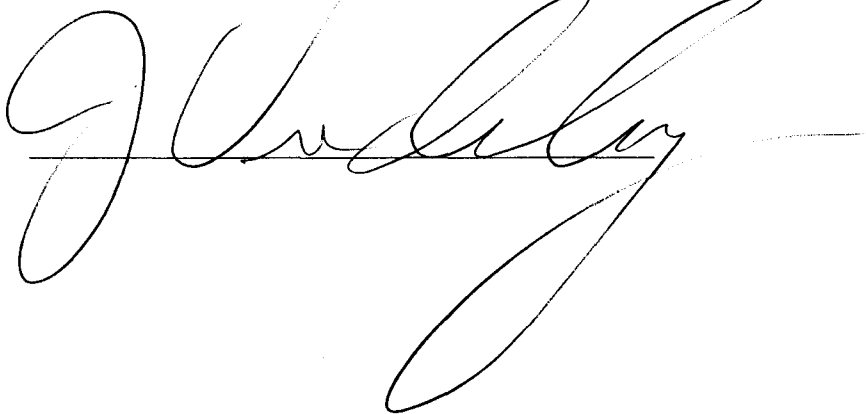
Marvin J. Raskin
414 Robin Rd.
W. Amherst, NY 14228

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
26th day of November, 1982.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 26, 1982

Marvin J. Raskin
414 Robin Rd.
W. Amherst, NY 14228

Dear Mr. Raskin:

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
Martin E. Trossman
627 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MARVIN J. RASKIN
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 1974 and 1976.

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DECISION

Petitioner, Marvin J. Raskin, 414 Robin Road, West Amherst, New York 14228, 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 years 1974 and 1976 (file No. 25153).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on December 16, 1981 at 2:45 P.M. Petitioner Marvin J. Raskin appeared with Martin E. Trossman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether "interest expense" of \$26,753.03 is deductible for unincorporated business tax purposes for 1974, and if not, whether the "other income" of \$24,547.50 should be included in the calculation of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Marvin J. Raskin, and his wife Sally Raskin, filed New York State income tax returns for 1974 and 1976. Petitioner Marvin J. Raskin filed New York State unincorporated business tax returns for said years. Petitioner is sole owner of Marvin Motors located at 34 Campbell Avenue,

Buffalo, New York. Marvin Motors' principal business activity was that of an auto broker dealing in used cars. On petitioner's Schedule "C", Profit or (Loss) From Business or Profession, there was reported "other income" of \$24,547.50 and "interest on business indebtedness" of \$26,753.00.

2. On December 15, 1977, the Audit Division issued a Statement of Audit Changes for the years 1974 and 1976 against petitioner Marvin J. Raskin. The Statement of Audit Changes was issued based on a field audit of the petitioner's personal and unincorporated business tax returns for 1974 through 1976. The following audit adjustments were made: (a) Interest expense of \$26,753.00 and \$2,361.00 were disallowed as business expenses, but allowed as personal expenses for the years 1974 and 1975 respectively. (b) Bonuses not included in income in personal and unincorporated business taxes were added to income for 1975. (c) Legal fees not deductible for personal and unincorporated business taxes were added to income for 1975 and 1976. (d) Unsubstantiated real estate taxes were added to personal and unincorporated business income for 1976. (e) Overstated purchases were added to personal and unincorporated business tax income for 1976.

The adjustments made for 1975 did not produce any additional personal or unincorporated business taxes for said year. Accordingly, on April 4, 1978, the Audit Division issued a Notice of Deficiency for 1974 and 1976 against petitioner Marvin J. Raskin. The Notice of Deficiency asserted additional personal income tax of \$752.00 for 1976 and additional unincorporated business tax of \$1,056.00 and \$466.00 for 1974 and 1976 respectively, plus interest of \$361.73, for a total due of \$2,635.73.

3. At the hearing, the petitioner conceded to all adjustments other than the disallowance of interest expense for unincorporated business tax purposes.

4. Petitioner Marvin J. Raskin borrowed monies from third parties which he in turn loaned to his brother and his brother's partner. They used the monies as "unencumber" capital which they used to start an automobile dealership known as Pioneer Dodge, Inc. These monies were not put on the books of Pioneer Dodge, Inc. as loans, since his brother and his brother's partner needed these monies as unencumber capital so as to be able to secure an automobile dealership franchise. In order that the petitioner would have the funds needed to pay the interest to the third parties, Pioneer Dodge, Inc. paid "commissions" to petitioner solely for the purpose of offsetting his interest expense. These "commissions", in the amount of \$24,547.50, were reported by petitioner as other income on the petitioner's Federal Schedule "C", Profit or (Loss) From Business or Profession, and New York State Unincorporated Business Tax Return for 1974.

5. During 1974, Marvin Motors purchased and sold forty five automobiles which accounted for \$48,170.00 in gross receipts and \$37,584.19 in cost of goods sold.

6. The petitioner contended that if the interest is held to be a nondeductible item for purposes of unincorporated business tax, then it should follow that the funds reported as "other income" should not be included in the unincorporated business tax calculation since the "other income" was earned solely from the financial operations of the petitioner and, therefore, do not constitute the carrying on of an unincorporated business.

CONCLUSIONS OF LAW

A. That the petitioner Marvin J. Raskin has failed to sustain the burden of proof as required by sections 722 and 689(e) of the Tax Law in establishing that the interest expense of \$26,753.03 was connected with the unincorporated

business tax entity, Marvin Motors. However, the commission (\$24,547.50) paid by Pioneer Dodge, Inc. and reported as "other income" is not connected with the unincorporated business tax entity of Marvin Motors and therefore not subject to the unincorporated business tax.

B. That the Audit Division is directed to recompute the unincorporated business tax for 1974, excluding the "other income" of \$24,547.50, since this income is related to the interest expense previously disallowed for unincorporated business tax purposes.

C. That the petition of Marvin J. Raskin is granted to the extent indicated in Conclusion of Law "B" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 26 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER