

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alfred Rosenthal (dec'd)
and Gladys Rosenthal, Executrix : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1970 & 1973.

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 Alfred Rosenthal (dec'd) and Gladys Rosenthal, Executrix the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred Rosenthal (dec'd)
and Gladys Rosenthal, Executrix
Seven Bridges Rd.
Little Silver, NJ 07739

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.

Carrie A. Hayland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alfred Rosenthal (dec'd) :
and Gladys Rosenthal, Executrix :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1970 & 1973.

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 Sidney T. Lippel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sidney T. Lippel
250 W. 57th St.
New York, NY 10019

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.

Emile J. Haglund

J. Vredenburg

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

January 29, 1982

Alfred Rosenthal (dec'd)
and Gladys Rosenthal, Executrix
Seven Bridges Rd.
Little Silver, NJ 07739

Dear Mrs. Rosenthal:

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 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
Sidney T. Lippel
250 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALFRED ROSENTHAL and GLADYS ROSENTHAL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the years 1970 and 1973	:	

Petitioners, Alfred Rosenthal and Gladys Rosenthal, Seven Bridges Road, Little Silver, New Jersey 07739, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22, of the Tax Law for the years 1970 and 1973 (File No. 24670).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 4, 1981 at 9:15 A.M. Petitioners appeared by Sidney T. Lippel, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the distributive share of New York partnership income received by petitioner Alfred Rosenthal, a non-resident, was taxable by New York State.

II. Whether penalties were properly imposed for failure to file tax returns and pay tax when due and for underestimating tax liability.

FINDINGS OF FACT

1. On February 1, 1978 the Audit Division issued a Statement of Audit Changes to Alfred H. Rosenthal and Gladys Rosenthal for the years 1970 and 1973 wherein additional tax was found to be due in the amount of \$14,895.29 on the grounds that "(d)istributions from a New York State Partnership are taxable to

a non-resident taxpayer", that "capital gains are items of tax preference in computing the minimum tax under Section 641", that "for both years, a deduction for allocable expenses attributable to items of tax preference has been made under section 642", and that "(f)or the year 1973, since capital gains are taxed at 60%, there is an additional New York State capital gain of 10% of the gain realized or 20% of the capital gain as reported on the New York State Tax Return as required under section 612(11)". In addition penalties were asserted under Sections 685(a)(1) and (2) for failure to file tax returns and pay tax when due and under Section 685(c) for underestimating tax liability. Accordingly, on May 5, 1978 the Audit Division issued a Notice of Deficiency in the amount of \$14,895.29 plus penalties and interest of \$12,321.07 for a total of \$27,216.36.

2. Petitioners' representative provided the Audit Division with partnership tax returns for the years 1970 through 1973, and Federal returns for said years culminating in the Statement of Audit Changes. The representative also participated in the calculation of the tax amounts and he is "satisfied on those figures". At no time during the early discussions and calculations were penalties mentioned. Petitioners and their representatives fully cooperated with the Audit Division.

3. Petitioner Alfred Rosenthal, now deceased, was a real estate investor. Petitioners' representative contended that Mr. Rosenthal believed that real property investment was like corporate stock as far as taxes were concerned. The partnership was terminated as of January 1, 1972 when one of the partners died. Although partnership returns were not filed in 1973, there "were installment sales which terminated in 1973". It took a great deal of correspondence between the Audit Division and petitioners before petitioners realized that "there was a duty to perform with the State of New York".

CONCLUSIONS OF LAW

A. That there is no issue of the taxability of the distributive share of income of a New York State partnership to non-resident Alfred Rosenthal.

Petitioners agreed to the calculations of the Audit Division. They aided in this endeavor.

B. That petitioners' failure to file tax returns for the years in issue was due to reasonable cause and not due to willful neglect. Therefore, the penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.

C. That petitioner has not met the requirements under section 685(d) of the Tax Law. Therefore, the penalty imposed pursuant to section 685(c) of the Tax Law is sustained.

D. That the petition of Alfred and Gladys Rosenthal is granted to the extent indicated in Conclusions of Law "B", 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