

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph A. Kaye, Jr. :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1975 & 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Charles J. Kaye :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1975 & 1976. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Charles J. Kaye, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

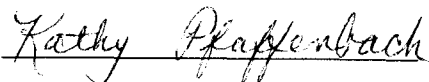
Charles J. Kaye
53 Admirals Dr. E.
W. Bay Shore, NY 11706

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
8th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 8, 1983

Charles J. Kaye
53 Admirals Dr. E.
W. Bay Shore, NY 11706

Dear Mr. Kaye:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

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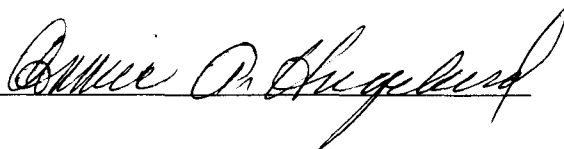
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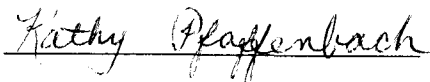
Joseph A. Kaye, Jr.
16 Sandra Dr.
Dix Hills, NY 11746

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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
8th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 8, 1983

Joseph A. Kaye, Jr.
16 Sandra Dr.
Dix Hills, NY 11746

Dear Mr. Kaye:

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STATE TAX COMMISSION

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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOSEPH A. KAYE, JR.
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1975 and 1976.

DECISION

In the Matter of the Petition
of
CHARLES J. KAYE
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1975 and 1976.

Petitioners, Joseph A. Kaye, Jr., 16 Sandra Drive, Dix Hills, New York 11746 and Charles J. Kaye, 53 Admirals Drive East, West Bay Shore, New York 11706, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1975 and 1976 (File Nos. 26370 and 26342).

A consolidated small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Veterans Memorial Highway, Room B-7, Hauppauge, New York 11787, on July 28, 1982 at 10:00 A.M. Petitioner Joseph A. Kaye, Jr. appeared pro se and on behalf of petitioner Charles J. Kaye. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners, in computing total New York income, must increase reported Federal adjusted gross income by their share of the New York State unincorporated business tax deductions taken on the partnership returns of Kaye Agency.

FINDINGS OF FACT

1. On July 11, 1978 the Audit Division issued a Statement of Audit Changes to petitioner Joseph A. Kaye, Jr. for the year 1975 wherein an "unincorporated business tax modification" of \$1,123.38 was made based on the following explanation:

"Unincorporated business taxes imposed by New York State are not deductible when determining personal income tax. On your personal income tax return you failed to increase your Federal income by \$1,123.38 representing your distributive share of the New York State unincorporated business tax deduction taken on the partnership return of Kaye Agency."

Accordingly, a Notice of Deficiency was issued against petitioner on March 30, 1979 asserting additional personal income tax of \$115.15 for 1975, plus interest of \$28.91, for a total of \$144.06.

2. On February 8, 1979 the Audit Division issued a Statement of Audit Changes to petitioner Joseph A. Kaye, Jr. for the year 1976 wherein a New York State unincorporated business tax modification of \$991.71 was made on a basis identical to that stated for 1975. Additionally, an adjustment was made for a 20 percent capital gain modification; however, since this adjustment was not contested, it is deemed not at issue herein. Pursuant to such statement, additional personal income tax of \$147.72 was computed. Penalty and interest of \$99.15 were asserted yielding a total of \$246.87. Said penalty was imposed under section 685(c) of the Tax Law for failure to pay estimated taxes.

3. On May 7, 1979 petitioner paid in full, "under protest", both the deficiency asserted for 1975 and the proposed deficiency computed for 1976 pursuant to the Statement of Audit Changes. Subsequently, on August 23, 1979 he filed a petition for refund of the 1975 and 1976 taxes paid "under protest".

4. On July 11, 1978 the Audit Division issued a Statement of Audit Changes to petitioner Charles J. Kaye for the year 1975 wherein an unincorporated business tax modification was made on a basis, and in an amount identical to the 1975 modification made with respect to petitioner Joseph A. Kaye, Jr. Accordingly, a Notice of Deficiency was issued against said petitioner on March 30, 1979 asserting additional personal income tax of \$147.45, plus interest of \$37.01, for a total of \$184.46.

5. On February 8, 1979 the Audit Division issued a Statement of Audit Changes to petitioner Charles J. Kaye for the year 1976 wherein an unincorporated business tax modification was made on a basis, and in an amount identical to the 1976 modification made with respect to petitioner Joseph A. Kaye, Jr. Accordingly, a Notice of Deficiency was issued against said petitioner on April 6, 1979 asserting additional personal income tax of \$152.48, plus penalty and interest of \$102.57, for a total of \$255.05. Said penalty was asserted pursuant to section 685(c) of the Tax Law for failure to pay estimated taxes.

6. Petitioners alleged that they are not required to make the modifications at issue herein since section 612(b)(3) of the Tax Law requires such modification solely with respect to income taxes, and the New York State unincorporated business tax is not an income tax.

CONCLUSIONS OF LAW

A. That Article 23 of the Tax Law is entitled "Unincorporated Business Income Tax" (emphasis supplied). Pursuant to NYCRR 201.1, said article "imposes

an income tax on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within New York State."

B. That petitioners' proportionate shares of the New York State unincorporated business tax deductions claimed on the 1975 and 1976 partnership returns of Kaye Agency constitute income taxes which are required to be added to their respective Federal adjusted gross incomes in the computation of total New York income within the meaning and intent of sections 617(a) and 612(b)(3) of the Tax Law and 20 NYCRR 119.3(a) and 116.2(c).

C. That the petition of Joseph A. Kaye, Jr. is denied. Accordingly, the refunds claimed for 1975 and 1976 pursuant to said petition are also denied.

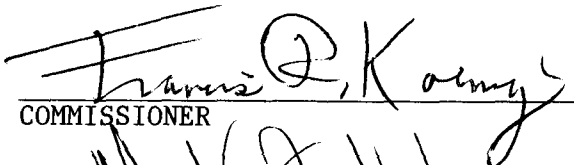
D. That the petition of Charles J. Kaye is denied and the notices of deficiency dated March 30, 1979 and April 6, 1979 are sustained, together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983


PRESIDENT


COMMISSIONER


COMMISSIONER