

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
National Benefit Fund for Hospital	:	
and Health Care Employees	:	AFFIDAVIT OF MAILING
for Refund of Unrelated Business Income Tax under	:	
under Articles 13 and 27 of the Tax Law for the	:	
Years 1970 through 1975.	:	

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon National Benefit Fund for Hospital and Health Care Employees, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

National Benefit Fund for Hospital and Health Care Employees
310 West 43rd Street
New York, NY 10036

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
7th day of October, 1983.

Susan Powell

Connie A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
National Benefit Fund for Hospital	:	
and Health Care Employees	:	AFFIDAVIT OF MAILING
for Refund of Unrelated Business Income Tax under	:	
Articles 13 and 27 of the Tax Law for the Years	:	
1970 through 1975.	:	

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Irving Gruber the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving Gruber
Fine and Gruber, P.C.
274 Madison Avenue
New York, NY 10016

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
7th day of October, 1983.

Susan Powell

Connie A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 7, 1983

National Benefit Fund for Hospital and Health Care Employees
310 West 43rd Street
New York, NY 10036

Gentlemen:

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) 1090 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
Irving Gruber
Fine and Gruber, P.C.
274 Madison Avenue
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
NATIONAL BENEFIT FUND FOR HOSPITAL AND	:	DECISION
HEALTH CARE EMPLOYEES	:	
	:	
for Refund of Unrelated Business Income Tax	:	
under Articles 13 and 27 of the Tax Law for the	:	
Years 1970 through 1975.	:	

Petitioner, National Benefit Fund for Hospital and Health Care Employees, 310 West 43rd Street, New York, New York 10036, filed a petition for refund of unrelated business income tax under Articles 13 and 27 of the Tax Law for the years 1970 through 1975 (File No. 32657).

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 22, 1982 at 2:45 P.M. Petitioner appeared by Fine & Gruber, P.C. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

- I. Whether the claims for refund by petitioner were timely.
- II. Whether section 1096(d) of the Tax Law (special refund authority) can be applied to petitioner's claims for refund if said claims were not timely.

FINDINGS OF FACT

1. On October 26, 1979, the Audit Division received from petitioner claims for credit or refund of unrelated business income tax for the years 1970 through 1977 on the grounds that petitioner reported unrelated business income to New York and that "taxpayer did not in fact have any unrelated business

income allocable to New York, and therefore was not required to file a CT-13... As no return was required to be filed no statute of limitations can run... and all monies paid should be refunded".

2. On December 13, 1979, the Audit Division advised petitioner that the claims for refund were being denied for the tax periods of 1970 through 1975 since under section 1087(a) of the Tax Law claims for credit or refund must be filed within three years from the time the returns were filed or two years from the time the tax was paid, whichever of such periods expires later. The Audit Division also advised petitioner that a question of law or fact existed, therefore section 1096(d) of the Tax Law did not apply.

Refunds for the years 1976 and 1977 were considered timely; however, certain information was requested to determine whether or not petitioner was exempt from tax. Said years are not at issue in this proceeding.

3. Petitioner filed New York State Unrelated Business Income Tax Reports under Article 13 of the Tax Law for the years at issue and paid the amount of tax computed thereon. Each return stated that the principal unrelated business activity of petitioner was "Business Lease Rents". Petitioner did not fill out Schedule C ("Unrelated Business Allocation") of the reports for the periods in issue. Schedule C instructed petitioner that "if you did not maintain a "regular" place of business outside New York State, leave this schedule blank... . If allocation is claimed, attach rider listing location of each place of business...".

Petitioner attached a copy of Federal Form 990-T, Exempt Organization Business Income Tax Return, to its 1972 and 1973 New York tax returns showing federal income tax paid, as a trust taxable at trust rates under section 511 of the Internal Revenue Code, on income derived from unrelated debt - financed

rental income. Said form did not indicate the location of any properties. The first indication that any property was located outside New York State was in the Perfected Petition dated February 20, 1981.

4. Petitioner contends that there is no question of fact, since property involved was located in Connecticut and that petitioner was a non-profit organization exempt from tax.

CONCLUSIONS OF LAW

A. That Tax Law section 1096(d) provides as follows:

"Special refund authority. -- Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article [Article 27 is applicable to Article 13 by virtue of section 295 of the Tax Law], the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue its certificates to the comptroller."

Petitioner did not notify the Tax Department of the existence of unrelated business property outside New York State within the time prescribed by section 1087(a) of the Tax Law nor did it disclose such information on any of its New York tax reports filed for the years in issue or in the federal returns submitted for 1972 and 1973. Therefore, there was a question of fact or law after the running of the statute of limitations and petitioner is not entitled to refunds based on section 1096(d) of the Tax Law.

B. That the claims for refund for the years 1970 through 1975, which were required to be filed within three years from the time the returns were filed or two years from the time the tax was paid, were filed on October 26, 1979, and were not timely pursuant to section 1087(a) of Article 27 of the Tax Law.

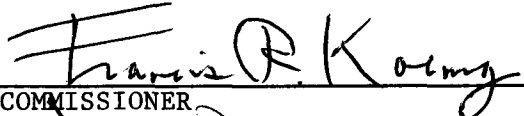
C. That the petition of National Benefit Fund for Hospital and Health
Care Employees is denied.

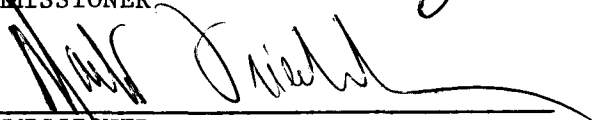
DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1983


PRESIDENT


COMMISSIONER


COMMISSIONER