

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of George M. Osserman	: : : : : : :	: : : : : : :
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 for the Years 1961 - 1964.		

State of New York  
County of Albany

David Parchuck, 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 4th day of February, 1983, he served the within notice of Decision by certified mail upon George M. Osserman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George M. Osserman  
444 Brickell Ave., Rm. 701  
Miami, FL 33131

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  
4th day of February, 1983.

David Parchuck

Conrad 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 :  
George M. Osserman :  
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 for :  
the Years 1961 - 1964. :  
:

---

State of New York  
County of Albany

David Parchuck, 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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Theodore F. Tonkonogy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Theodore F. Tonkonogy  
150 E. 58th St.  
New York, NY 10155

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  
4th day of February, 1983.

David Parchuck

Cannie A. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

February 4, 1983

George M. Osserman  
444 Brickell Ave., Rm. 701  
Miami, FL 33131

Dear Mr. Osserman:

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  
Theodore F. Tonkonogy  
150 E. 58th St.  
New York, NY 10155  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE OSSERMAN	:	DECISION
	:	
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 1961 through 1964.	:	

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Petitioner, George Osserman, 444 Brickell Avenue, Room 701, Miami, Florida 33131, 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 1961 through 1964 (File No. 00419).

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 2:45 P.M. Petitioner appeared by Theodore F. Tonkonogy, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the consents extending the statute of limitations for assessment were properly validated by the Audit Division and whether the consent dated January 31, 1969 was signed by petitioner George M. Osserman.

II. Whether the Notice of Deficiency issued on February 24, 1970, for the years 1961 through 1964, is barred by the expiration of the applicable statute of limitations.

III. Whether the expiration of a seven year period from the time the petition was filed until the time an evidentiary hearing was scheduled constitutes

gross laches, thereby barring the Audit Division from further action on the Notice of Deficiency.

IV. Whether the notice of small claims hearing dated July 25, 1977 was improperly served upon petitioner, thereby denying him his right to due process and rendering any further proceedings null and void.

FINDINGS OF FACT

1. Petitioner, George M. Osserman, timely filed New York State personal income tax returns for the years 1961, 1962, 1963 and 1964. He did not file unincorporated business tax returns for said years.

2. On February 24, 1970, the Audit Division issued to petitioner a Notice of Deficiency for the years 1961 through 1964 asserting that additional personal income and unincorporated business taxes were due in the amount of \$1,686.64, together with interest and penalty, the penalty being issued in accordance with Tax Law section 685(a). The Notice of Deficiency was based upon an explanatory Statement of Audit Changes, also dated February 24, 1970, wherein petitioner's tax liability was recomputed "As the result of field audit for the above indicated years, additional tax is due in accordance with attached schedules as follows:"

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>
Additional Personal Income Tax Due	\$478.38	\$188.48	\$644.47	\$55.00
Unincorporated Business Tax Due			\$277.99	\$42.32
Section 685(a) Penalty			\$ 69.50	\$10.58

3. The schedules attached to the Statement of Audit Changes referred to in Finding of Fact 2, supra, were Schedules of Audit Adjustments (Forms DO-63) and Tax Computation Schedules (Forms DO-63.1). The Schedules of Audit Adjustment indicated that the changes proposed for the years 1961 and 1962 were "...in conformity with Federal audit"; while for the years 1963 and 1964 certain

business expenses were disallowed as unsubstantiated and petitioner's income from insurance activities was deemed subject to unincorporated business tax.

4. A series of four consents were obtained by the Audit Division extending the period of limitations upon assessment. The first of said consents was for the year 1962 and extended the period for assessment until April 15, 1967. This consent was properly validated by the Audit Division, however, neither petitioner nor the Audit Division dated the consent. The remaining three consents, which had the effect of extending the period for assessment for the years 1962, 1963 and 1964 until April 15, 1970, were both dated and properly validated. No consent was obtained extending the period for assessment for the year 1961.

5. At the hearing held herein petitioner's representative rendered sworn testimony that the signature of G.M. Osserman, as it appears on the last consent dated January 31, 1969, was not the true signature of his client. Further testimony established that petitioner's representative, a notary public, had acknowledged Mr. Osserman's signature many times in the normal course of business. Two documents have been taken into evidence wherein petitioner's signature was acknowledged. The first of said documents was the petition for redetermination and, to the untrained eye, the signature of George Osserman as it appears on the petition bears a substantial resemblance to the signature appearing on the consent dated January 31, 1969. The second document bearing the notarized signature of petitioner is the power of attorney. The signature on the power of attorney bears little resemblance to the signature on the petition. Both of the signatures are illegible. Petitioner was not present at the hearing held herein and therefore offered no testimony with respect to the authenticity of the signature appearing on the consent dated

January 31, 1969. No credible documentary or other evidence was adduced to support the contention that petitioner did not sign the consent dated January 31, 1969.

6. The petition for redetermination of the deficiency was filed on April 7, 1970. A notice of small claims hearing dated July 25, 1977 was mailed to petitioner c/o Medical Management Service Company, Inc., 839 Beacon Street, Boston, Massachusetts, setting down September 2, 1977 as the date for the administrative hearing. Petitioner asserts that the long, unexplained delay of over seven years from the date the petition was filed until the scheduling of an evidentiary hearing constitutes laches and bars the Audit Division from further claims.

7. Petitioner also contended that the notice of small claims hearing dated July 25, 1977 was mailed to an address which he had vacated sometime in late 1973 or early 1974 and, therefore, he did not receive proper notice of the hearing, consequently violating his constitutional right to due process. No evidence or testimony was presented which indicated that petitioner notified the Audit Division of a change in his Boston, Massachusetts address.

8. The hearing held herein was limited in scope only to the jurisdictional issues raised by petitioner as enumerated above. If relief is not granted on the jurisdictional issues, a second hearing will be held addressing the substantive issues. Accordingly, the facts as found above are limited only to said jurisdictional matters.

#### CONCLUSIONS OF LAW

A. That the consents extending the period of limitations for assessment for the years 1962, 1963 and 1964 were properly validated by the Audit Division

and constitute binding agreements providing for the extension of the statute of limitations.

B. That petitioner has failed to sustain the burden of proof under section 689(e) of the Tax Law to show that the signature appearing on the consent dated January 31, 1969 was not his true signature.

C. That the personal income tax found due in the Notice of Deficiency dated February 24, 1970 for the years 1962, 1963 and 1964 was timely assessed within the extended date for assessment in accordance with the meaning and intent of section 683(c)(2) of the Tax Law.

D. That petitioner has failed to sustain the burden of proof to show that he reported to the Audit Division the changes or corrections in his 1961 or 1962 Federal taxable incomes pursuant to section 659 of the Tax Law and, accordingly, the personal income tax found due for said years as the result of the Federal changes may be assessed at any time within the meaning and intent of section 683(c)(1)(C) of the Tax Law.

E. That petitioner did not file unincorporated business tax returns for the years 1963 and 1964 and the tax may therefore be assessed at any time [Tax Law sections 722 and 683(c)(1)(A)].

F. That the argument to dismiss on the ground of laches is denied on authority of Matter of Jamestown Lodge 1681 Loyal Order of Moose, Inc. (Catherwood) 31 A.D. 2d 981, where it is said that "Laches, waiver or estoppel may not be imputed to the State in the absence of statutory authority" and that "This rule is generally applied in connection with tax matters". Also, see G.H. Walker & Co., et al., v. State Tax Commission, 62 A.D. 2d 77.

Said argument is also denied for the further reason that the record does not establish that petitioner has been damaged or prejudiced by delay.



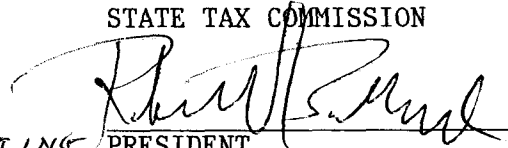
G. That the argument to dismiss on the ground of denial of due process for lack of proper service is also rejected. The notice of small claims hearing dated July 25, 1977 was mailed to petitioner at his last known address pursuant to section 691(b) of the Tax Law and it has not been shown that petitioner advised the Audit Division of a change in his Boston, Massachusetts address.


H. That the petition of George Osserman is denied in so far as it relates to the jurisdictional issues and the matter is referred to the Tax Appeals Bureau for further proceedings not inconsistent herewith.

DATED: Albany, New York

FEB 4 1983

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

I dissent.



TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

*Copy*  
*Ref.*

Theodore F. Tonkonogy  
150 E. 58th St.  
New York, NY 10155

**CERTIFIED**  
**P 278 401 758**  
**MAIL**

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

February 4, 1983

George M. Osserman  
444 Brickell Ave., Rm. 701  
Miami, FL 33131

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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  
Theodore F. Tonkonogy  
150 E. 58th St.  
New York, NY 10155  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GEORGE OSSERMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
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ISSUES

I. Whether the consents extending the statute of limitations for assessment were properly validated by the Audit Division and whether the consent dated January 31, 1969 was signed by petitioner George M. Osserman.

II. Whether the Notice of Deficiency issued on February 24, 1970, for the years 1961 through 1964, is barred by the expiration of the applicable statute of limitations.

III. Whether the expiration of a seven year period from the time the petition was filed until the time an evidentiary hearing was scheduled constitutes

gross laches, thereby barring the Audit Division from further action on the Notice of Deficiency.

IV. Whether the notice of small claims hearing dated July 25, 1977 was improperly served upon petitioner, thereby denying him his right to due process and rendering any further proceedings null and void.

#### FINDINGS OF FACT

1. Petitioner, George M. Osserman, timely filed New York State personal income tax returns for the years 1961, 1962, 1963 and 1964. He did not file unincorporated business tax returns for said years.

2. On February 24, 1970, the Audit Division issued to petitioner a Notice of Deficiency for the years 1961 through 1964 asserting that additional personal income and unincorporated business taxes were due in the amount of \$1,686.64, together with interest and penalty, the penalty being issued in accordance with Tax Law section 685(a). The Notice of Deficiency was based upon an explanatory Statement of Audit Changes, also dated February 24, 1970, wherein petitioner's tax liability was recomputed "As the result of field audit for the above indicated years, additional tax is due in accordance with attached schedules as follows:"

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>
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3. The schedules attached to the Statement of Audit Changes referred to in Finding of Fact 2, supra, were Schedules of Audit Adjustments (Forms DO-63) and Tax Computation Schedules (Forms DO-63.1). The Schedules of Audit Adjustment indicated that the changes proposed for the years 1961 and 1962 were "...in conformity with Federal audit"; while for the years 1963 and 1964 certain

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5. At the hearing held herein petitioner's representative rendered sworn testimony that the signature of G.M. Osserman, as it appears on the last consent dated January 31, 1969, was not the true signature of his client. Further testimony established that petitioner's representative, a notary public, had acknowledged Mr. Osserman's signature many times in the normal course of business. Two documents have been taken into evidence wherein petitioner's signature was acknowledged. The first of said documents was the petition for redetermination and, to the untrained eye, the signature of George Osserman as it appears on the petition bears a substantial resemblance to the signature appearing on the consent dated January 31, 1969. The second document bearing the notarized signature of petitioner is the power of attorney. The signature on the power of attorney bears little resemblance to the signature on the petition. Both of the signatures are illegible. Petitioner was not present at the hearing held herein and therefore offered no testimony with respect to the authenticity of the signature appearing on the consent dated

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7. Petitioner also contended that the notice of small claims hearing dated July 25, 1977 was mailed to an address which he had vacated sometime in late 1973 or early 1974 and, therefore, he did not receive proper notice of the hearing, consequently violating his constitutional right to due process. No evidence or testimony was presented which indicated that petitioner notified the Audit Division of a change in his Boston, Massachusetts address.

8. The hearing held herein was limited in scope only to the jurisdictional issues raised by petitioner as enumerated above. If relief is not granted on the jurisdictional issues, a second hearing will be held addressing the substantive issues. Accordingly, the facts as found above are limited only to said jurisdictional matters.

#### CONCLUSIONS OF LAW

A. That the consents extending the period of limitations for assessment for the years 1962, 1963 and 1964 were properly validated by the Audit Division

and constitute binding agreements providing for the extension of the statute of limitations.

B. That petitioner has failed to sustain the burden of proof under section 689(e) of the Tax Law to show that the signature appearing on the consent dated January 31, 1969 was not his true signature.

C. That the personal income tax found due in the Notice of Deficiency dated February 24, 1970 for the years 1962, 1963 and 1964 was timely assessed within the extended date for assessment in accordance with the meaning and intent of section 683(c)(2) of the Tax Law.

D. That petitioner has failed to sustain the burden of proof to show that he reported to the Audit Division the changes or corrections in his 1961 or 1962 Federal taxable incomes pursuant to section 659 of the Tax Law and, accordingly, the personal income tax found due for said years as the result of the Federal changes may be assessed at any time within the meaning and intent of section 683(c)(1)(C) of the Tax Law.

E. That petitioner did not file unincorporated business tax returns for the years 1963 and 1964 and the tax may therefore be assessed at any time [Tax Law sections 722 and 683(c)(1)(A)].

F. That the argument to dismiss on the ground of laches is denied on authority of Matter of Jamestown Lodge 1681 Loyal Order of Moose, Inc. (Catherwood) 31 A.D. 2d 981, where it is said that "Laches, waiver or estoppel may not be imputed to the State in the absence of statutory authority" and that "This rule is generally applied in connection with tax matters". Also, see G.H. Walker & Co., et al., v. State Tax Commission, 62 A.D. 2d 77.

Said argument is also denied for the further reason that the record does not establish that petitioner has been damaged or prejudiced by delay.



G. That the argument to dismiss on the ground of denial of due process for lack of proper service is also rejected. The notice of small claims hearing dated July 25, 1977 was mailed to petitioner at his last known address pursuant to section 691(b) of the Tax Law and it has not been shown that petitioner advised the Audit Division of a change in his Boston, Massachusetts address.

H. That the petition of George Osserman is denied in so far as it relates to the jurisdictional issues and the matter is referred to the Tax Appeals Bureau for further proceedings not inconsistent herewith.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING PRESIDENT

Francis R. Koeng  
COMMISSIONER

COMMISSIONER

1 dissent.

Mark Freedland

TA 26 (9-79)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

**CERTIFIED**  
**P 278 401 757**  
**MAIL**

George M. Osseman  
444 Brickell Ave., Rm. 701  
Miami, FL 33131

*POB 3135*

MIAMI, FL 33131  
PM 1:32  
8 FEB  
1983

NATIONAL  
CHILDREN'S  
DENTAL HEALTH WORK

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

February 4, 1983

George M. Osserman  
444 Brickell Ave., Rm. 701  
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cc: Petitioner's Representative  
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STATE OF NEW YORK

STATE TAX COMMISSION

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and constitute binding agreements providing for the extension of the statute of limitations.

B. That petitioner has failed to sustain the burden of proof under section 689(e) of the Tax Law to show that the signature appearing on the consent dated January 31, 1969 was not his true signature.

C. That the personal income tax found due in the Notice of Deficiency dated February 24, 1970 for the years 1962, 1963 and 1964 was timely assessed within the extended date for assessment in accordance with the meaning and intent of section 683(c)(2) of the Tax Law.

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E. That petitioner did not file unincorporated business tax returns for the years 1963 and 1964 and the tax may therefore be assessed at any time [Tax Law sections 722 and 683(c)(1)(A)].

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G. That the argument to dismiss on the ground of denial of due process for lack of proper service is also rejected. The notice of small claims hearing dated July 25, 1977 was mailed to petitioner at his last known address pursuant to section 691(b) of the Tax Law and it has not been shown that petitioner advised the Audit Division of a change in his Boston, Massachusetts address.

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DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

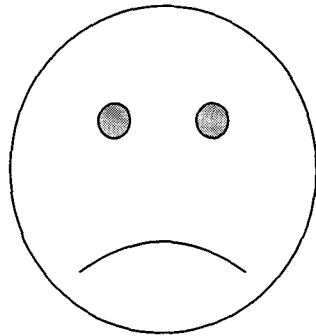
\_\_\_\_\_  
COMMISSIONER

1 dissent.





# **CORRECTION FOLLOWS**



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GEORGE OSSERMAN	:	DECISION
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 1961 through 1964.	:	

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Petitioner, George Osserman, 444 Brickell Avenue, Room 701, Miami, Florida 33131, 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 1961 through 1964 (File No. 00419).

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 2:45 P.M. Petitioner appeared by Theodore F. Tonkonogy, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the consents extending the statute of limitations for assessment were properly validated by the Audit Division and whether the consent dated January 31, 1969 was signed by petitioner George M. Osserman.

II. Whether the Notice of Deficiency issued on February 24, 1970, for the years 1961 through 1964, is barred by the expiration of the applicable statute of limitations.

III. Whether the expiration of a seven year period from the time the petition was filed until the time an evidentiary hearing was scheduled constitutes

gross laches, thereby barring the Audit Division from further action on the Notice of Deficiency.

IV. Whether the notice of small claims hearing dated July 25, 1977 was improperly served upon petitioner, thereby denying him his right to due process and rendering any further proceedings null and void.

FINDINGS OF FACT

1. Petitioner, George M. Osserman, timely filed New York State personal income tax returns for the years 1961, 1962, 1963 and 1964. He did not file unincorporated business tax returns for said years.

2. On February 24, 1970, the Audit Division issued to petitioner a Notice of Deficiency for the years 1961 through 1964 asserting that additional personal income and unincorporated business taxes were due in the amount of \$1,686.64, together with interest and penalty, the penalty being issued in accordance with Tax Law section 685(a). The Notice of Deficiency was based upon an explanatory Statement of Audit Changes, also dated February 24, 1970, wherein petitioner's tax liability was recomputed "As the result of field audit for the above indicated years, additional tax is due in accordance with attached schedules as follows:"

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>
Additional Personal Income Tax Due	\$478.38	\$188.48	\$644.47	\$55.00
Unincorporated Business Tax Due			\$277.99	\$42.32
Section 685(a) Penalty			\$ 69.50	\$10.58

3. The schedules attached to the Statement of Audit Changes referred to in Finding of Fact 2, supra, were Schedules of Audit Adjustments (Forms DO-63) and Tax Computation Schedules (Forms DO-63.1). The Schedules of Audit Adjustment indicated that the changes proposed for the years 1961 and 1962 were "...in conformity with Federal audit"; while for the years 1963 and 1964 certain

business expenses were disallowed as unsubstantiated and petitioner's income from insurance activities was deemed subject to unincorporated business tax.

4. A series of four consents were obtained by the Audit Division extending the period of limitations upon assessment. The first of said consents was for the year 1962 and extended the period for assessment until April 15, 1967. This consent was properly validated by the Audit Division, however, neither petitioner nor the Audit Division dated the consent. The remaining three consents, which had the effect of extending the period for assessment for the years 1962, 1963 and 1964 until April 15, 1970, were both dated and properly validated. No consent was obtained extending the period for assessment for the year 1961.

5. At the hearing held herein petitioner's representative rendered sworn testimony that the signature of G.M. Osserman, as it appears on the last consent dated January 31, 1969, was not the true signature of his client. Further testimony established that petitioner's representative, a notary public, had acknowledged Mr. Osserman's signature many times in the normal course of business. Two documents have been taken into evidence wherein petitioner's signature was acknowledged. The first of said documents was the petition for redetermination and, to the untrained eye, the signature of George Osserman as it appears on the petition bears a substantial resemblance to the signature appearing on the consent dated January 31, 1969. The second document bearing the notarized signature of petitioner is the power of attorney. The signature on the power of attorney bears little resemblance to the signature on the petition. Both of the signatures are illegible. Petitioner was not present at the hearing held herein and therefore offered no testimony with respect to the authenticity of the signature appearing on the consent dated

January 31, 1969. No credible documentary or other evidence was adduced to support the contention that petitioner did not sign the consent dated January 31, 1969.

6. The petition for redetermination of the deficiency was filed on April 7, 1970. A notice of small claims hearing dated July 25, 1977 was mailed to petitioner c/o Medical Management Service Company, Inc., 839 Beacon Street, Boston, Massachusetts, setting down September 2, 1977 as the date for the administrative hearing. Petitioner asserts that the long, unexplained delay of over seven years from the date the petition was filed until the scheduling of an evidentiary hearing constitutes laches and bars the Audit Division from further claims.

7. Petitioner also contended that the notice of small claims hearing dated July 25, 1977 was mailed to an address which he had vacated sometime in late 1973 or early 1974 and, therefore, he did not receive proper notice of the hearing, consequently violating his constitutional right to due process. No evidence or testimony was presented which indicated that petitioner notified the Audit Division of a change in his Boston, Massachusetts address.

8. The hearing held herein was limited in scope only to the jurisdictional issues raised by petitioner as enumerated above. If relief is not granted on the jurisdictional issues, a second hearing will be held addressing the substantive issues. Accordingly, the facts as found above are limited only to said jurisdictional matters.

#### CONCLUSIONS OF LAW

A. That the consents extending the period of limitations for assessment for the years 1962, 1963 and 1964 were properly validated by the Audit Division

and constitute binding agreements providing for the extension of the statute of limitations.

B. That petitioner has failed to sustain the burden of proof under section 689(e) of the Tax Law to show that the signature appearing on the consent dated January 31, 1969 was not his true signature.

C. That the personal income tax found due in the Notice of Deficiency dated February 24, 1970 for the years 1962, 1963 and 1964 was timely assessed within the extended date for assessment in accordance with the meaning and intent of section 683(c)(2) of the Tax Law.

D. That petitioner has failed to sustain the burden of proof to show that he reported to the Audit Division the changes or corrections in his 1961 or 1962 Federal taxable incomes pursuant to section 659 of the Tax Law and, accordingly, the personal income tax found due for said years as the result of the Federal changes may be assessed at any time within the meaning and intent of section 683(c)(1)(C) of the Tax Law.

E. That petitioner did not file unincorporated business tax returns for the years 1963 and 1964 and the tax may therefore be assessed at any time [Tax Law sections 722 and 683(c)(1)(A)].

F. That the argument to dismiss on the ground of laches is denied on authority of Matter of Jamestown Lodge 1681 Loyal Order of Moose, Inc. (Catherwood) 31 A.D. 2d 981, where it is said that "Laches, waiver or estoppel may not be imputed to the State in the absence of statutory authority" and that "This rule is generally applied in connection with tax matters". Also, see G.H. Walker & Co., et al., v. State Tax Commission, 62 A.D. 2d 77.

Said argument is also denied for the further reason that the record does not establish that petitioner has been damaged or prejudiced by delay.

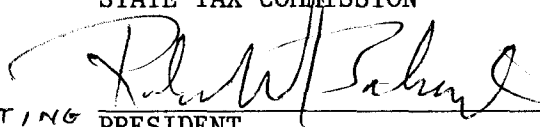
G. That the argument to dismiss on the ground of denial of due process for lack of proper service is also rejected. The notice of small claims hearing dated July 25, 1977 was mailed to petitioner at his last known address pursuant to section 691(b) of the Tax Law and it has not been shown that petitioner advised the Audit Division of a change in his Boston, Massachusetts address.

H. That the petition of George Osserman is denied in so far as it relates to the jurisdictional issues and the matter is referred to the Tax Appeals Bureau for further proceedings not inconsistent herewith.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

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COMMISSIONER

1 dissent.

