

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Seymour L. Nathan (Deceased) and :
Henriette B. Nathan : AFFIDAVIT OF MAILING
:
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, Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1975 and 1976, and New York City Personal :
Income Tax under Article 30 of the Tax Law for the :
Year 1976. :
_____ :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 10th day of August, 1984, he served the within notice of Decision by certified mail upon Seymour L. Nathan (Deceased) and Henriette B. Nathan, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour L. Nathan (Deceased)
and Henriette B. Nathan
165 East 32nd St.
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
10th day of August, 1984.

Corrie A. Narducci
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

Constance R. Hagmann
Authorized to administer oaths
pursuant to Tax Law section 174

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

August 10, 1984

Seymour L. Nathan, Deceased
and Henriette B. Nathan
165 East 32nd St.
New York, NY 10016

Dear Mrs. Nathan:

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 & 1312 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Sidney W. Leibowitz
Sperduto, Spector & Company
10 Columbus Circle
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| SEYMOUR L. NATHAN (DECEASED) AND | : | DECISION |
| HENRIETTE B. NATHAN | : | |
| | : | |
| 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, | : | |
| Unincorporated Business Tax under Article 23 of | : | |
| the Tax Law for the Years 1975 and 1976, and | : | |
| New York City Personal Income Tax under Article | : | |
| 30 of the Tax Law for the Year 1976. | : | |

Petitioners, Seymour L. Nathan (deceased) and Henriette B. Nathan, 165 East 32nd Street, New York, New York 10016, 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 1975 and 1976, unincorporated business tax under Article 23 of the Tax Law for the years 1975 and 1976 and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File Nos. 29925, 29926 and 29927).

A formal hearing was commenced before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1982 at 11:10 A.M., continued on December 15, 1982 at 1:15 P.M. and concluded on December 9, 1983 at 1:00 P.M., with all briefs submitted by March 22, 1984. Petitioners appeared at the hearing on May 18, 1982 by Sperduto Spector & Company (Sidney W. Leibowitz, C.P.A.) and at the hearings on December 15, 1982 and December 9, 1983 by Allen Michelson, Esq. The Audit Division appeared at the hearings on May 18, 1982 and December 15,

1982 by Paul B. Coburn, Esq. and at the hearing on December 9, 1983 by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether, in the year 1975, petitioners realized income of \$43,225.00 which they failed to report for personal income tax and unincorporated business tax purposes.

FINDINGS OF FACT

1.(a) For the year 1975, petitioners, Seymour L. Nathan (now deceased) and Henriette B. Nathan, filed a New York State Combined Income Tax Return, stating that Mrs. Nathan's occupation was interior designer and advising that Mr. Nathan was retired. In addition, Mrs. Nathan filed a 1975 unincorporated business tax return for her sole proprietorship.

(b) For the year 1976, petitioners filed a New York State Income Tax Resident Return (with New York City Personal Income Tax and Nonresident Earnings Tax) on a combined basis, similarly stating that Mrs. Nathan was an interior designer and Mr. Nathan, retired. Mrs. Nathan also filed an unincorporated business tax return.

2.(a) On April 11, 1980, the Audit Division issued to Mr. Nathan a Notice of Deficiency, asserting personal income tax under Article 22 of the Tax Law for the year 1975 in the amount of \$188.30, plus penalty and interest.

(b) On April 11, 1980, the Audit Division issued to Mrs. Nathan a Notice of Deficiency, asserting personal income tax under Article 22 and unincorporated business tax under Article 23 for 1975 in the respective amounts of \$19,010.32 and \$6,746.80, plus penalty and interest.

(c) On April 11, 1980, the Audit Division issued to Mr. Nathan a Notice of Deficiency, asserting New York State personal income tax under Article 22,

New York City personal income tax under Article 30 and unincorporated business tax under Article 23 for the year 1976 in the respective amounts of \$9,486.60, \$2,728.25 and \$2,472.74, plus penalty and interest.

(d) These asserted deficiencies resulted from innumerable adjustments (approximately 150 to 200) to petitioners' returns, falling within three general categories: (i) disallowed medical expense and interest expense deductions; (ii) disallowed business expenses; and (iii) the finding of additional, unreported income for personal income tax and unincorporated business tax purposes. The Audit Division relied upon the extended six-year period of limitations on assessment, on the ground that petitioners improperly omitted from adjusted gross income amounts in excess of 25 percent thereof, and improperly omitted from unincorporated business gross income amounts in excess of 25 percent thereof.

3. During the period intervening between the second and third hearing dates, the Audit Division's representatives and petitioners' representatives engaged in extensive discussions. They were able to reach agreement on most of the adjustments, with the following exceptions:

| | <u>TYPE OF ADJUSTMENT</u> | <u>AMOUNT OF ADJUSTMENT</u> |
|------|--|---------------------------------|
| 1975 | unreported sales | \$41,279.00 |
| | unexplained business deposits | 1,946.00 |
| | unsubstantiated interest expense deduction | 450.00 |
| 1976 | unreported sales | \$ 1,716.36 |
| | unexplained deposits | 1,200.00 |
| | unexplained deposits | 1,087.32 |
| | unsubstantiated Medicare reimbursement | 94.88 |
| | unreported interest, Nebraska Public Power bond | 145.00 |
| | fees from PRI | 1,000.00 |
| | adjustment to medical expenses deduction | 410.49 |
| | unsubstantiated contributions | 976.00 |

The asserted deficiencies, as revised by the parties' agreements, are shown below.

| 1975 | <u>Seymour Nathan</u> | <u>Henriette Nathan</u> |
|-----------------------------|-----------------------|-------------------------|
| Personal income tax | \$329.60 | \$5,397.20 |
| Minimum income tax | 25.40 | -- |
| | <u>\$355.00</u> | <u>\$5,397.20</u> |
| Surcharge | 8.88 | 134.93 |
| Total personal income tax | <u>\$363.88</u> | <u>\$5,532.13</u> |
| Unincorporated business tax | -- | 1,881.00 |
| Tax due | <u>\$363.88</u> | <u>\$7,413.13</u> |
| Tax previously stated | 343.24 | 123.94 |
| Additional tax due | <u>\$ 20.64</u> | <u>\$7,289.19</u> |

| 1976 (Seymour Nathan) | <u>NYS Personal Income Tax</u> | <u>NYC Personal Income Tax</u> |
|-----------------------|------------------------------------|------------------------------------|
| Tax | \$305.90 | \$130.60 |
| Surcharge | 7.65 | -- |
| | <u>\$313.55</u> | <u>\$130.60</u> |
| Tax previously stated | 55.31 | 24.85 |
| Additional tax due | <u>\$258.24</u> | <u>\$105.75</u> |

At the hearing, the Audit Division's representative conceded the following: petitioners substantiated the interest expense deduction claimed in 1975 in the amount of \$450.00; and petitioners established that \$5,500.00 of the total of \$41,279.00, treated by the Audit Division as unreported sales in 1975, consisted of rental income which had been reported. Petitioners' representative conceded to the personal income tax deficiencies asserted for 1976 (but without penalties), solely to avoid the necessity of litigating the underlying adjustments.

4. Mrs. Nathan alleges that, of the total amount of \$41,279.00 treated by the Audit Division as unreported sales in 1975, the sum of \$25,149.02 represented an interbank transfer. In support of her position, she offered in evidence photocopies of two documents: a credit advice of First National City Bank (now Citibank), reflecting a phone credit made on February 21, 1975 in the amount of

\$25,149.02 from the Bank of New York; and the checking account summary for the period February 4, 1975 through March 3, 1975 issued to her by First National City Bank, indicating a deposit in the amount of \$25,149.02 credited on February 21, 1975. Mrs. Nathan was unable to produce any further Citibank documentation regarding this deposit as the bank does not retain such records for extended periods, but she did recollect that the deposit was a transfer from another account.

5.(a) With regard to the remaining \$10,630.73 of the \$41,279.00 in allegedly unreported sales for 1975, this amount was deposited to Mrs. Nathan's checking account at First National City Bank on March 27, 1975 and was comprised of five items: \$34.00, \$10,275.18, \$34.00, \$100.00 and \$187.55. Referring to her own handwritten records made at the time of the transaction, Mrs. Nathan recalled that the two \$34.00 amounts consisted of "house allowance" given to her by Mr. Nathan, the \$100.00 amount was provided by her husband to be used for payment of rent, the \$187.55 amount was payment rendered by a client for her services as an interior designer, and the \$10,275.18 amount was a matured asset (in the nature of a bond or certificate of deposit) with accrued interest.

(b) Mrs. Nathan's present accountants, Sperduto Spector & Company, requested and obtained from the accounting firm which prepared petitioners' 1975 returns, Louis Sternbach & Company ("Sternbach"), photocopies of petitioners' 1975 returns with attachments (including Forms 1099) and the notes of the Sternbach tax partner (now deceased) who reviewed the returns and workpapers for purposes of quality control. These notes contain the comment, "Sale of N.Y. Bank Savings: pchsd. 9/74 sold 3/24/75. Include the \$275.18 as interest income." From an examination of these documents, Sperduto Spector & Company concluded that the \$10,275.18 item deposited to Mrs. Nathan's account on

March 27, 1975 consisted of the certificate of deposit with accrued interest, and that such interest had been reported on petitioners' returns.

6.(a) Turning to the final adjustment at issue, allegedly unexplained business deposits of \$1,946.00, Mrs. Nathan maintains that \$1,083.60 of said amount represented a transfer from Mr. Nathan's checking account at Chase Manhattan (account number 020-1-044831) to his checking account at Manufacturers Hanover Trust Company (account number 5-43724). In support of this position, she proffered photocopies of three documents: the checking account summary (account number 020-1-044831) for the period January 13 through February 11, 1976 issued by Chase Manhattan to Mr. Nathan, showing a balance on February 6, 1976 of \$1,083.60; the checking account summary (account number 5-43724) for the period February 6 through March 5, 1976 issued by Manufacturers Hanover to Mr. Nathan, indicating a deposit on February 11, 1976 of \$1,083.60; and the last page of Mr. Nathan's check register for the Chase Manhattan account, reflecting the last check drawn on such account to "Man. Han." in the amount of \$1,083.60.

(b) Petitioners offered no proof as to the source of the remaining \$861.95.

CONCLUSIONS OF LAW

A. That petitioners have carried their burden to establish that, of the total amount of \$41,279.00 considered by the Audit Division as unreported sales for 1975, \$35,424.20 represented two interbank transfers (Findings of Fact "4" and "5"). Their proof regarding \$1,083.60 of the total amount of \$1,946.00, considered by the Audit Division as unexplained business deposits in 1975, is not accepted, however, inasmuch as it tends to show an interbank transfer in 1976, rather than 1975. Taking account of the demonstrated interbank transfers and the Audit Division's concession respecting petitioners' rental income

(Finding of Fact "3"), the amount of additional income realized but not reported by petitioners in 1975 was \$2,300.80.


B. That the period of limitations for assessment of personal income tax is six years from the date the return is filed if "an individual omits from his New York adjusted gross income...an amount properly includible therein which is in excess of twenty-five per cent of the amount of New York adjusted gross income...". Tax Law section 683(d)(1). The period of limitations for assessment of unincorporated business tax is similarly six years if an amount is omitted from unincorporated business gross income which is in excess of 25 percent of such gross income (sections 683[d][1], 722); gross income is determined without diminution by the cost of sales or services (Matter of Thomas Spinoso et al., State Tax Comm., January 6, 1984; Internal Revenue Code section 6501[e][1][A][i]). Comparison of the amount omitted from petitioners' adjusted gross income (\$2,300.80) to petitioners' reported adjusted gross income (\$13,542.00) and of the amount omitted from unincorporated business gross income (\$2,300.80) to reported business gross income (\$15,686.00) reveals that the extended six-year period of limitations is inapplicable. Consequently, the notices of deficiency for 1975 were not issued in a timely manner.

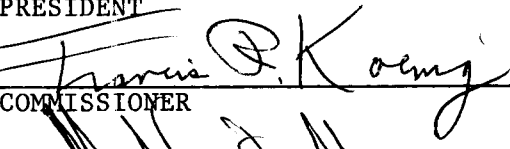
C. That the petition of Seymour L. Nathan (deceased) and Henriette B. Nathan is granted to the extent indicated in Conclusions of Law "A" and "B", and the notices of deficiency for the year 1975 issued on April 11, 1980 and revised by the agreements of the parties are cancelled.

DATED: Albany, New York

AUG 10 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER