

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jose & Nelly Rosado :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Income :
& UBT under Article 22, 23 & 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 6th day of January, 1983, he served the within notice of Decision by certified mail upon Jose & Nelly Rosado, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jose & Nelly Rosado
Calle 91, Bloque 92 #34
Villa Carolina
Carolina, P.R. 00630

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
6th day of January, 1984.

David Parchuck

Carrie A. Haglund
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jose & Nelly Rosado :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Income :
& UBT under Article 22, 23 & 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 6th day of January, 1983, he served the within notice of Decision by certified mail upon Stephen P. Sophir, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen P. Sophir
280 Madison Ave., Suite 905
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 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
6th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

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

January 6, 1984

Jose & Nelly Rosado
Calle 91, Bloque 92 #34
Villa Carolina
Carolina, P.R. 00630

Dear Mr. & Mrs. Rosado:

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
Stephen P. Sophir
280 Madison Ave., Suite 905
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSE AND NELLY ROSADO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes and New York State	:	
Unincorporated Business Tax under Articles 22,	:	
23 and 30 of the Tax Law for the Year 1976.	:	

Petitioners, Jose and Nelly Rosado filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes and New York State unincorporated business tax under Articles 22, 23 and 30 of the Tax Law for the Year 1976 (File No. 30030).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 2, 1983 at 1:15 P.M.

ISSUES

I. Whether the Audit Division properly determined the amount of petitioners' income subject to New York State and New York City personal income tax.

II. Whether petitioners' income was derived from unincorporated businesses carried on by petitioner Jose Rosado thereby rendering this income subject to New York State unincorporated business tax.

III. Whether penalties were properly asserted by the Audit Division.

FINDINGS OF FACT

1. Petitioners, Jose and Nelly Rosado, filed a joint New York State Income Tax Resident Return for the year 1976. On this return they reported their total New York income as \$27,228.00. Petitioners also reported New York

itemized deductions of \$14,171.00 and exemptions of \$3,250.00, resulting in New York taxable income of \$9,807.00. On the basis of these amounts, petitioners reported and paid New York State personal income tax of \$447.00 and New York City personal income tax of \$179.00. Attached to petitioners' return was a Schedule of Profit or (Loss) From Business or Profession. On this schedule, Jose Rosado reported a net profit of \$11,759.00 from the business activity of the wholesale and retail distribution of eggs. Jose Rosado did not file an unincorporated business tax return for 1976.

2. On February 6, 1980, the Audit Division issued a Notice of Deficiency to petitioners asserting a tax due of \$5,500.92, plus penalty and interest of \$1,589.25, for a total amount due of \$7,090.17. The Notice of Deficiency was based, in part, on the conclusion that petitioners had additional unreported income subject to New York State and New York City personal income tax. The Notice was also based on the disallowance of petitioner's itemized deductions. The adjustments were made because of petitioners' refusal to appear, on two occasions, at scheduled appointments with the Audit Division.

3. On April 14, 1980, the Audit Division issued a second Notice of Deficiency to petitioners asserting a tax due of \$7,698.67, plus penalties of \$1,275.01 and interest of \$1,961.38, for a total amount due of \$10,935.06. This Notice of Deficiency asserted the same deficiency as the first Notice of Deficiency as well as an additional deficiency on the ground that petitioners had income subject to New York State unincorporated business tax.

4. After the second Notice of Deficiency was issued, it was modified by the Audit Division based upon the results of adjustments which were agreed upon between Jose Rosado and the Internal Revenue Service. These adjustments increased Jose Rosado's federal taxable income. Currently, the Audit Division

is asserting that petitioners' New York State and New York City tax liability is computed as follows:

New York State taxable income as corrected		\$22,207.00
New York State tax	\$1,676.91	
Tax surcharge	41.92	
Unincorporated business tax	1,450.79	
Total New York State tax	\$3,169.62	
New York City resident tax	564.87	
Total Tax	\$3,734.49	
Less tax previously paid	626.00	
Total New York State and New York City tax due	\$3,108.49	
Penalties		
Tax Law §685(a)(1)	\$699.30	
Tax Law §685(a)(2)	<u>777.12</u>	
Total penalties	1,476.42	
Interest	1,009.46	
Total amount due	<u>\$5,594.37</u>	

5. The deficiency currently asserted by the Audit Division takes into consideration all of petitioners' itemized deductions.

6. The penalties were asserted for failure to file an unincorporated business tax return and failure to pay the amounts shown as tax on the unincorporated business tax return required to be filed.

7. During the period in issue, Jose Rosado was the proprietor of a business known as Rosado Country Fresh Eggs. This business engaged in the wholesale and retail distribution of eggs.

8. From approximately October 1975 through August 1976, Jose Rosado redeemed approximately \$2,100,000.00 in illegally obtained food stamp coupons.* Jose Rosado would receive from other individuals stolen authorization to

* The financial loss to the Government was not \$2,100,000.00 because the Treasury did not receive the cash value of the authorization to purchase cards.

purchase food stamp cards from certain individuals and have them redeemed by another individual upon Jose Rosado's payment of a fee per card. Jose Rosado was arrested and convicted of a federal offense for these activities.

9. The adjustment to Jose Rosado's income by the Internal Revenue Service was premised upon Jose Rosado's income arising from the receipt and redemption of stolen authorization to purchase food stamp cards.

10. Petitioners' representative acknowledged at the hearing that petitioners' income was subject to income tax, but maintained that the adjustment to Jose Rosado's income made by the Internal Revenue Service should not be subject to unincorporated business tax and that the interest and penalties pertaining thereto should be abated.

CONCLUSIONS OF LAW

A. That Article 30 of the Tax Law provides that "(t)he city taxable income of a city resident individual shall mean and be the same as his New York taxable income as defined in section six hundred eleven of this chapter." (Tax Law § 1303). Generally, section 611(a) of the Tax Law defines an individuals New York taxable income as their New York adjusted gross income less their New York deductions and the New York personal exemptions. New York adjusted gross income of a resident individual, in turn, is defined under Tax Law § 612(a) as that individual's federal adjusted gross income as defined in the laws of the United States with certain modifications not relevant herein. Petitioners have failed to sustain their burden of proof pursuant to section 689(e) of the Tax Law to show that they did not have the unreported income which is subject to New York State and New York City personal income tax that was disclosed by the audit conducted by the Internal Revenue Service.

B. That, in general, "[a]n unincorporated business means any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity..." [Tax Law §703(a)].

C. That Jose Rosado's activity of wholesale and retail distribution of eggs constituted an unincorporated business [Tax Law §703(a); 20 NYCRR 203.1(a)]. Similarly, Jose Rosado's activity of receiving and redeeming stolen food stamp authorization cards constituted a business, albeit illegal, conducted with continuity, frequency and regularity, the income from which is subject to unincorporated business tax [20 NYCRR 203.1(a)].

D. That section 705(a) of the Tax Law provides:

"(a) General -- Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business, with the modifications specified in this section."

E. That since the income in issue was includible in federal gross income (Finding of Fact "4"), it is also includible in unincorporated business gross income [Tax Law §705(a)].

F. That inasmuch as there is no evidence that Nelly Rosado was engaged in an unincorporated business, she is not liable for unincorporated business tax or the penalties arising from failure to file an unincorporated business tax return or pay unincorporated business tax due.

G. That Jose Rosado has failed to establish that his failure to file an unincorporated business tax return and pay the tax due thereon was due to reasonable cause rather than willful neglect (Tax Law §§685(a)(1), 685(a)(2), 722).

H. That the Audit Division's computations, as shown in Finding of Fact "4", represent the correct New York State and City personal income tax, State unincorporated business tax and penalties due. The petition of Jose and Nelly

Rosado is granted to the extent shown in Conclusion of Law "F" and is in all other respects, denied.

DATED: Albany, New York

JAN 06 1984

STATE TAX COMMISSION

Rodriguez
PRESIDENT

Francis P. Koenig
COMMISSIONER

W. J. Smith
COMMISSIONER

TA-36 (9/76)

State of New York - Department of Taxation and Finance
Tax Appeals BureauREQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 2/7/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition 4 th Dec. - 1/6/84
Name Jose & Nelly Rosado	
Address Calle 91, Bloque 92 # 34 Villa Carolina Carolina, P.R. 00630	

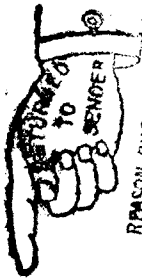
Results of search by Files

<input type="checkbox"/> New address:	NIF RP 82 81 FO
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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



REASON CHECKED

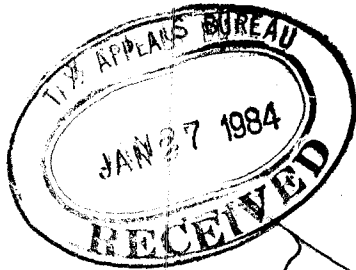
- ☐ Undelivered
- ☐ Outside Delivery Unit
- ☐ No Address
- ☒ No Mail Service
- ☐ Moved, let's us address
- ☐ Insufficient Address
- ☐ No such number
- ☐ Returned

Jose & Nelly Rosado
Calle 91, Bloque 92 #34
Vieja Carolina
Carolina, P.R. 00630

CERTIFIED

P 470315 041

MAIL



M/17

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

January 6, 1984

Jose & Nelly Rosado
Calle 91, Bloque 92 #34
Villa Carolina
Carolina, P.R. 00630

Dear Mr. & Mrs. Rosado:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stephen P. Sophir
280 Madison Ave., Suite 905
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOSE AND NELLY ROSADO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
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A. That Article 30 of the Tax Law provides that "(t)he city taxable income of a city resident individual shall mean and be the same as his New York taxable income as defined in section six hundred eleven of this chapter." (Tax Law § 1303). Generally, section 611(a) of the Tax Law defines an individuals New York taxable income as their New York adjusted gross income less their New York deductions and the New York personal exemptions. New York adjusted gross income of a resident individual, in turn, is defined under Tax Law § 612(a) as that individual's federal adjusted gross income as defined in the laws of the United States with certain modifications not relevant herein. Petitioners have failed to sustain their burden of proof pursuant to section 689(e) of the Tax Law to show that they did not have the unreported income which is subject to New York State and New York City personal income tax that was disclosed by the audit conducted by the Internal Revenue Service.

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C. That Jose Rosado's activity of wholesale and retail distribution of eggs constituted an unincorporated business [Tax Law §703(a); 20 NYCRR 203.1(a)]. Similarly, Jose Rosado's activity of receiving and redeeming stolen food stamp authorization cards constituted a business, albeit illegal, conducted with continuity, frequency and regularity, the income from which is subject to unincorporated business tax [20 NYCRR 203.1(a)].

D. That section 705(a) of the Tax Law provides:

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E. That since the income in issue was includible in federal gross income (Finding of Fact "4"), it is also includible in unincorporated business gross income [Tax Law §705(a)].

F. That inasmuch as there is no evidence that Nelly Rosado was engaged in an unincorporated business, she is not liable for unincorporated business tax or the penalties arising from failure to file an unincorporated business tax return or pay unincorporated business tax due.

G. That Jose Rosado has failed to establish that his failure to file an unincorporated business tax return and pay the tax due thereon was due to reasonable cause rather than willful neglect (Tax Law §§685(a)(1), 685(a)(2), 722).

H. That the Audit Division's computations, as shown in Finding of Fact "4", represent the correct New York State and City personal income tax, State unincorporated business tax and penalties due. The petition of Jose and Nelly

Rosado is granted to the extent shown in Conclusion of Law "F" and is in all other respects, denied.

DATED: Albany, New York

JAN 06 1984

STATE TAX COMMISSION

Rodriguez
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER