

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leon & Anna Hellman :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1974 & 1975. :
:

AFFIDAVIT OF MAILING

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 30th day of August, 1985, he served the within notice of Decision by certified mail upon Leon & Anna Hellman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon & Anna Hellman
1433 50th St.
Brooklyn, NY 11219

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
30th day of August, 1985.

David Parchuck

Anna R. 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 :
Leon & Anna Hellman :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1974 & 1975. :
:

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 30th day of August, 1985, he served the within notice of Decision by certified mail upon Louis J. Septimus, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis J. Septimus
120 W. 31st Street
New York, NY 10001

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
30th day of August, 1985.

David Parchuck

Samuel A. Mageluck
Authorized to administer oaths
pursuant to Tax Law section 174

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

August 30, 1985

Leon & Anna Hellman
1433 50th St.
Brooklyn, NY 11219

Dear Mr. & Mrs. Hellman:

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, 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
Louis J. Septimus
120 W. 31st Street
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEON HELLMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 and 1975.	:	

Petitioner, Leon Hellman, 1433 50th Street, Brooklyn, New York 11219, 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 1974 and 1975 (File No. 32730).¹

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 23, 1984 at 1:15 P.M., with all briefs to be submitted on or before November 26, 1984. Petitioner appeared by Louis J. Septimus, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner failed to report income for the years 1974 and 1975 and, if so, whether the Audit Division properly asserted a fraud penalty for such failure.

1 The hearing was commenced to review the petition of Leon and Anna Hellman, however, no petition was filed by Anna Hellman. At the hearing, the representative of the Audit Division stated that a deficiency had not been asserted against Anna Hellman during the years in issue.

FINDINGS OF FACT

1. On or about April 15, 1975, petitioner and his wife, Anna Hellman, filed a joint New York State Income Tax Resident Return for the year 1974. On or about October 14, 1976, petitioner and his wife filed a joint New York State Income Tax Resident Return for the year 1975.

2. On September 8, 1980, the Audit Division issued a Notice of Deficiency to Leon Hellman for the years 1974 and 1975² asserting a deficiency of personal income tax in the amount of \$8,297.21, plus penalty for fraud and interest of \$7,320.00, for a balance due of \$15,617.21.

3. To the extent at issue herein, the Notice of Deficiency was based upon attributing to Mr. Hellman additional income of \$41,549.39 for 1974 and \$4,884.31 for 1975. Information as to alleged unreported income was provided to the New York State Department of Taxation and Finance by the Office of the Special State Prosecutor for Nursing Homes ("Special Prosecutor"). The Audit Division also asserted a penalty for fraud based upon petitioner's plea to certain counts of an indictment in the Supreme Court of the State of New York.

4. On or about August 31, 1977, Mr. Hellman was indicted, by a grand jury impaneled by the New York Supreme Court in the County of Bronx, on thirteen violations of the penal law and two violations of the tax law.

5. To the extent relevant herein, the first count of the indictment accused petitioner of grand larceny in the second degree in that he falsely claimed as reimbursable expenses, on a New York State Department of Health

2 Apparently as a result of a clerical error, the Notice of Deficiency listed only the year 1974. No issue has been raised with respect to the sufficiency of the Notice of Deficiency for the year 1975.

form, certain expenditures for merchandise which was not delivered and for which rebates were made to petitioner. The rebates were not reflected as adjusted expenditures.

6. The second count of the indictment accused petitioner of falsifying business records in the first degree in violation of Penal Law §175.10 as follows:

"The defendant, LEON HELLMAN, in the County of the Bronx, on or about September 30, 1973, with intent to defraud and to commit the crimes of Grand Larceny in the Second Degree, Grand Larceny in the Third Degree and Attempt to Evade Tax, Article 22 section 695 of the Tax Law of the State of New York, and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of LACONIA NURSING HOME, to wit, the defendant intentionally made and caused to be made an entry in the purchase journal which reflected purchases of merchandise in the amount of \$2,039.90 from a grocery vendor of the LACONIA NURSING HOME in the period ending on or about September 30, 1973.

WHEREAS, the defendant well knew that such entry in an amount of \$2,309.90 for the period ending on or about September 30, 1973 in the purchase journal of the LACONIA NURSING HOME was false and fraudulent, in that said merchandise was not delivered, in whole or in part, to the nursing home."

7. The fourteenth and fifteenth counts of the indictment charged petitioner with having willfully and knowingly rendered false and fraudulent New York State income tax resident returns on or about, respectively, April 15, 1975 and October 14, 1976.

8. On June 20, 1979, petitioner pled guilty to the first two counts of the indictment in satisfaction of all counts of the indictment. One condition of the plea, which condition was accepted by petitioner, was that petitioner pay \$13,943.00 representing taxes due. The amount of tax was calculated by the Special Prosecutor's office upon the same amount of unreported income which is the basis for the Notice of Deficiency at issue. However, the Special Prosecutor's

office inadvertently applied the wrong tax rate resulting in the greater amount sought by the Audit Division than that agreed to by petitioner.

9. The record of the allocution is unclear as to whether the agreement to pay the \$13,943.00 was pursuant to the second or fourteenth counts of the indictment.

10. After petitioner entered the plea of guilty, he paid the Special Prosecutor the agreed upon sum of \$13,943.00. Thereafter, said amount was deposited in the general revenue account of the Department of Taxation and Finance.

11. The Audit Division did not perform an audit of petitioner and, both prior to and during the hearing, did not provide petitioner with information as to the source of the alleged additional income.

CONCLUSIONS OF LAW


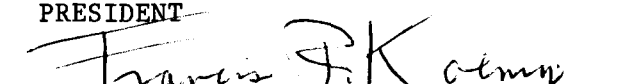

A. That petitioner's agreement to pay the Special Prosecutor \$13,943.00 constituted a final agreement between petitioner and the Department of Taxation and Finance representing all taxes, penalty and interest due. Therefore, both the Department of Taxation and Finance's claim of a deficiency greater than \$13,943.00 and petitioner's claim for a refund are denied.

B. That the petition of Leon Hellman is granted only to the extent of Conclusion of Law "A" and the Audit Division is directed to modify the Notice of Deficiency issued September 8, 1980 accordingly; the petition is, in all other respects, denied.

DATED: Albany, New York

AUG 30 1985

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER