

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Irving S. Hines :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income & :
Unincorporated Business Taxes under Articles 22 & :
23 of the Tax Law for the Years 1969 - 1971. :
:

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 22nd day of March, 1985, he served the within notice of Decision by certified mail upon Irving S. Hines, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving S. Hines
162 Pennsylvania Ave.
Roosevelt, NY 11575

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
22nd day of March, 1985.

David Parchuck

James A. Huppert
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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of :
Irving S. Hines :
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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 22nd day of March, 1985, he served the within notice of Decision by certified mail upon John R. Serpico, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201

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
22nd day of March, 1985.

David Parchuck

Annice A. Hayward
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 22, 1985

Irving S. Hines
162 Pennsylvania Ave.
Roosevelt, NY 11575

Dear Mr. Hines:

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, 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
John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRVING S. HINES	:	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 1969, 1970 and 1971.	:	

Petitioner, Irving S. Hines, 162 Pennsylvania Avenue, Roosevelt, New York 11575, 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 1969, 1970 and 1971 (File No. 39603).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 23, 1984 at 9:15 A.M. Petitioner appeared by John R. Serpico, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's income derived during the years at issue is properly subject to personal income tax and unincorporated business tax.

II. Whether the penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law should be abated.

FINDINGS OF FACT

1. Irving S. Hines (hereinafter "petitioner") did not file New York State personal income tax returns or unincorporated business tax returns for the

years 1969, 1970 and 1971. He also failed to file Federal personal income tax returns for said years.

2. As the result of a "net worth" audit conducted by the Internal Revenue Service, it was determined that petitioner had unreported income during the years at issue as follows:

<u>Year</u>	<u>Unreported Income</u>
1969	\$18,321.47
1970	\$ 9,468.43
1971	\$16,023.95

Petitioner had consented to the Federal income tax deficiency which resulted from said audit.

3. On March 4, 1982, the Audit Division issued a Statement of Personal Income Tax Audit Changes and a Statement of Unincorporated Business Tax Audit Changes to petitioner wherein the aforestated Federal adjustments for unreported income were held taxable for New York State personal income tax and unincorporated business tax purposes. Accordingly, two (2) notices of deficiency were issued against petitioner on June 17, 1982. One such notice asserted New York State personal income tax for 1969, 1970 and 1971 of \$2,548.05, penalties of \$1,337.73, plus interest of \$1,887.49, for a total due of \$5,773.27. The other notice asserted unincorporated business tax for the years 1969 and 1970 of \$615.46,¹ penalties of \$331.32, plus interest of \$481.74 for an amount due of \$1,428.52. Said amount due was then reduced by the "total amount paid and/or credit" of \$69.47, for a balance due of \$1,359.05. The penalties asserted on both notices

1 This Notice of Deficiency did not assert unincorporated business tax for the year 1971 since the unincorporated business tax liability determined for said year was previously satisfied by application of a refund due petitioner from a prior taxable year.

of deficiency were imposed pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law for failure to file returns for the years at issue, failure to pay the taxes determined to be due and negligence, respectively. For unincorporated business tax purposes, said sections were incorporated into Article 23 of the Tax Law by section 722.

4. Petitioner initially contended that the deficiencies asserted are "null and void" since "the information that was used was illegally obtained by officers of the State of New York" and "the State cannot profit from the illegal acts of its employees". This contention relates to petitioner's alleged false arrest by New York State narcotics police officers during which the information used in determining the Federal deficiency, and subsequently the New York State deficiencies, was illegally seized. However, during the hearing held herein, petitioner abandoned this position and he conceded to the deficiency asserted for personal income tax purposes based on the aforestated Federal audit adjustments.

5. Petitioner argued that the deficiency asserted for unincorporated business tax purposes was improper since he was not carrying on a business during the years at issue herein.

6. Petitioner was assessed self-employment tax by the Internal Revenue Service for the years 1969, 1970 and 1971. However, petitioner contended that this fact is not meaningful since the Federal deficiency was based on a compromise.

7. Petitioner testified that the income he earned during the years at issue was derived from "gambling, playing numbers, shooting craps, you know, hustling" and that "sometimes I do odd jobs, sometimes I would be shooting craps, sometimes I would be playing numbers, anything".

8. Petitioner's representative contended that the penalties asserted should be waived on the ground that "the taxpayer didn't have, in his (petitioner's) opinion, taxable income". Petitioner claimed that he didn't file tax returns because he "didn't have a job".

CONCLUSIONS OF LAW

A. That section 703(a) of the Tax Law provides, in pertinent part, that:

"An unincorporated business means any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity..."

B. That section 689(e) of the Tax Law provides that in any case before the tax commission under this article, the burden of proof shall be upon the petitioner except for three issues, none of which are applicable to the instant case.

That for unincorporated business tax purposes, section 689(e) of the Tax Law is incorporated into Article 23 by section 722.

C. That petitioner's testimony with respect to his activities engaged in during the years at issue is at best vague. Accordingly, he has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that his activities engaged in during the years at issue did not constitute the carrying on of an unincorporated business.

D. That petitioner's activities engaged in during the years at issue constituted the carrying on of an unincorporated business pursuant to section 703(a) of the Tax Law. Accordingly, his income derived from such activities is subject to the imposition of unincorporated business tax pursuant to section 701(a) of the Tax Law.

E. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that his failure to file

returns, and pay the taxes determined to be due was due to reasonable cause, rather than to willful neglect. Accordingly, the penalties asserted are hereby sustained.

F. That the petition of Irving S. Hines is denied and the two (2) notices of deficiency issued June 17, 1982 are sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 22 1985


PRESIDENT


COMMISSIONER


COMMISSIONER