

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gerald Meinster :
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 :
1977 - 1979. :
:

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 16th day of July, 1985, he served the within notice of Decision by certified mail upon Gerald Meinster, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald Meinster
22 Willmington Dr.
Dix Hills, NY 11746

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
16th day of July, 1985.

David Parchuck

Annmarie O'Hage-Cud
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Gerald Meinster :
for Redetermination of a Deficiency or Revision :
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Tax under Article 22 of the Tax Law for the Years :
1977 - 1979. :
:

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 16th day of July, 1985, he served the within notice of Decision by certified mail upon Irving E. Cohen, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving E. Cohen
2126 Howell St.
Bellmore, NY 11710

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
16th day of July, 1985.

David Parchuck

David A. Hegdorn
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 16, 1985

Gerald Meinster
22 Willmington Dr.
Dix Hills, NY 11746

Dear Mr. Meinster:

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
Irving E. Cohen
2126 Howell St.
Bellmore, NY 11710
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GERALD MEINSTER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1977, 1978 and	:	
1979.	:	

Petitioner, Gerald Meinster, 22 Willmington Drive, Dix Hills, New York 11746, 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 1977, 1978 and 1979 (File No. 38287).

A 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 March 20, 1985 at 9:15 A.M. Petitioner appeared by Irving E. Cohen. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether adjustments attributing additional unreported income to petitioner for the years 1977, 1978 and 1979 were proper.

FINDINGS OF FACT

1. . Gerald Meinster (hereinafter "petitioner") timely filed a New York State Income Tax Resident Return with his wife, Elizabeth Meinster, for each of the years 1977, 1978 and 1979 under filing status "Married filing separately on one Return".

2. On January 22, 1982, the Audit Division issued a Notice of Deficiency against petitioner for the years 1977, 1978 and 1979 asserting additional personal income tax of \$34,059.72, plus penalty of \$1,702.97 and interest of \$8,900.47, for a total due of \$44,663.16. Said notice was premised upon the following adjustments made as the result of a field audit incorporating the cash availability analysis method of income reconstruction:

<u>ADJUSTMENTS</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
Additional Funds Required	\$101,416.00	\$42,498.00	\$ 91,827.00
Mortgage Principal on Installment Sale at 100%	3,718.00	4,097.00	4,506.00
Allocation of Interest Income between spouses	28,659.50	11,952.50	11,059.50
Allocation of Rental Income between spouses	-0-	-0-	521.00
Unreported Interest	<u>-0-</u>	<u>-0-</u>	<u>14.00</u>
TOTAL ADJUSTMENT	<u>\$133,793.50</u>	<u>\$58,547.50</u>	<u>\$107,927.50</u>

The penalty asserted on the Notice of Deficiency was for negligence pursuant to section 685(b) of the Tax Law.

3. On April 6, 1980, petitioner executed a consent form which extended the period of limitation upon assessment of 1977 personal income tax to any time on or before April 15, 1982.

4. The only adjustments contested by petitioner were those made for "Additional Funds Required" (see Finding of Fact "2", supra).

5. Prior to 1977 petitioner and his wife owned a wholesale tobacco, grocery and candy distributorship known as Jerry Meinster Food Corp. Petitioner alleged that when said corporation was liquidated in 1976, it had outstanding accounts receivable on its books of approximately \$150,000.00.

6. Petitioner contended that the adjustments attributing additional unreported income to him for each year at issue represented personal collections

of the corporation's outstanding accounts receivable during 1977, 1978 and 1979 which he claims are not taxable to him personally.

7. Collections on the outstanding accounts receivable of the corporation were deposited by petitioner's wife into their personal savings account.

8. Petitioner alleged that the outstanding accounts receivable were reported on the books of Jerry Meinster Food Corp. and that the corporate taxes due thereon were paid by the corporation.

9. Petitioner failed to submit corporation tax returns or any documentation which would establish that the corporation had paid tax on the income derived from those sales represented by the corporation's accounts receivable which he personally collected during the years at issue.

CONCLUSIONS OF LAW


A. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that the adjustments made each year at issue for "Additional Funds Required" were erroneous or improper.


B. That the petition of Gerald Meinster is denied and the Notice of Deficiency issued January 22, 1982 is sustained together with such additional penalty and interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 16 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

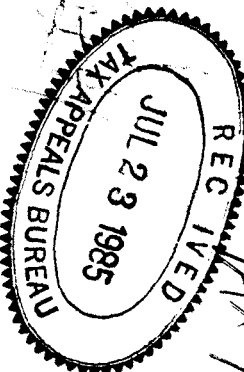
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

[Handwritten notes and stamps, including "RECEIVED" and "JUL 23 1985"]

Gerald Meinster
22 Wilmington Dr.
Dix Hills, NY 11746

CERTIFIED
P 095 690 899

MAIL



Tax Appeals

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

July 16, 1985

Gerald Meinster
22 Willmington Dr.
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Phone # (518) 457-2070

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STATE TAX COMMISSION

cc: Petitioner's Representative
Irving E. Cohen
2126 Howell St.
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Taxing Bureau's Representative

STATE OF NEW YORK

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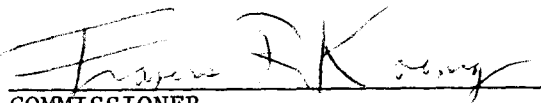
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DATED: Albany, New York

STATE TAX COMMISSION

JUL 16 1985


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