

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Louis C. Ostrer

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Personal Income
& UBT under Article 22 & 23 of the Tax Law for
the Years 1963-1965, 1967-1971, 1976 & 1977.

:

:

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Louis C. Ostrer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis C. Ostrer
181 Kings Point Rd.
Great Neck, NY 11024

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
23rd day of May, 1985.

David Parchuck

James 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 :
Louis C. Ostrer :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law :
for the Years 1963-1965, 1967-1971, 1976 & 1977.

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Steven M. Ostrer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steven M. Ostrer
251 Hempstead Turnpike
Elmont, NY 11003

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
23rd day of May, 1985.

David Parchuck

James D. Hagedorn

Authorized to administer oaths
pursuant to Tax Law section 174

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

May 23, 1985

Louis C. Ostrer
181 Kings Point Rd.
Great Neck, NY 11024

Dear Mr. Ostrer:

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
Steven M. Ostrer
251 Hempstead Turnpike
Elmont, NY 11003
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LOUIS C. OSTRER	:	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 1963 through 1965, 1967	:	
through 1971, 1976 and 1977.	:	

Petitioner, Louis C. Ostrer, 181 Kings Point Road, Great Neck, New York 11024, 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 1963 through 1965, 1967 through 1971, 1976 and 1977 (File Nos. 31503, 31504, 31505 and 31506).

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 22, 1984 at 1:15 P.M., with all briefs to be submitted on or before December 10, 1984. Petitioner appeared by Steven M. Ostrer, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the notices of deficiency were issued beyond the statute of limitations.

II. Whether the income from petitioner's activities was subject to unincorporated business tax.

III. Whether there is reasonable cause warranting the cancellation of penalties.

FINDINGS OF FACT

1. On July 9, 1980, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of personal income tax and unincorporated business tax for the years 1963, 1964 and 1967 in the amount of \$17,243.01, plus penalty and interest of \$19,058.27, for a balance due of \$36,301.28. The Statement of Audit Adjustment explained that since petitioner failed to file returns for the foregoing tax years, the computations were based upon information in the Audit Division's possession in accordance with section 681 of the Tax Law. In addition, the Audit Division asserted that petitioner's income was subject to unincorporated business tax. Lastly, penalties were asserted pursuant to sections 685(a) and 685(c) of the Tax Law for, respectively, failure to file a return and pay the tax due and underestimation of tax.

2. On July 9, 1980, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of unincorporated business tax for the years 1965, 1966 and 1968 in the amount of \$2,718.67, plus penalty and interest of \$7,908.13, for a total amount due of \$10,626.80. The Statement of Audit Adjustment explained that penalties were asserted for the years 1965, 1966 and 1968 pursuant to section 685(a) of the Tax Law for the failure to file a personal income tax return on time and pay the tax due. The Statement also explained that penalties were imposed pursuant to sections 685(a) and 685(c) of the Tax Law for the year 1965 for failure to file an unincorporated business tax return and underestimation of unincorporated business tax.

3. On July 9, 1980, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of unincorporated business tax for the years 1968 through 1971 in the amount of \$21,350.18, plus penalty and interest of \$22,407.37, for a total amount due of \$43,757.55. For the year 1968, the

penalty was imposed pursuant to section 685(a) of the Tax Law for failure to file an unincorporated business tax return. For the years 1969 through 1971, penalties were imposed pursuant to section 685(a)(1) of the Tax Law for failure to file a timely return, section 685(a)(2) of the Tax Law for failure to pay the amounts shown due on a return required to be filed and section 685(c) of the Tax Law for underpayment of estimated tax.

4. On July 9, 1980, the Audit Division issued a Notice of Deficiency asserting a deficiency of personal income tax and unincorporated business tax in the amount of \$448,550.73, plus penalty and interest of \$244,581.96, for a total amount due of \$693,132.69. The Statement of Audit Adjustment explained that since petitioner did not report his personal income tax and unincorporated business tax liability, the Audit Division utilized information in its possession in accordance with section 681 of the Tax Law. The Statement further explained that penalties were imposed pursuant to section 685(a)(1) of the Tax Law for late filing of personal income tax returns and section 685(c) of the Tax Law for underestimation of personal income tax. In addition, penalties were imposed pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law for, respectively, failure to file an unincorporated business tax return, failure to pay the amounts shown as tax on a return required to be filed and underestimation of unincorporated business tax.

5. The notices of deficiency were based in part, upon an article in the New York Times edition of July 19, 1978 which stated, among other things, that petitioner had earned several million dollars by selling insurance programs to unions.

6. At the hearing, petitioner's representative maintained that he was unable to fairly represent his client's interest because of his client's incarceration.

CONCLUSIONS OF LAW

A. That section 683(c)(1)(A) of the Tax Law provides that tax may be assessed at any time if no return is filed. Since there is no evidence that petitioner filed either New York State personal income tax returns or unincorporated business tax returns during the years in issue, the notices of deficiency were timely issued (Tax Law §§683(c)(1)(A); 722).

B. That petitioner has not presented any evidence to establish that his activities were not subject to unincorporated business tax (Tax Law §689(e); 722).


C. That petitioner has not presented any evidence warranting the cancellation of penalties.

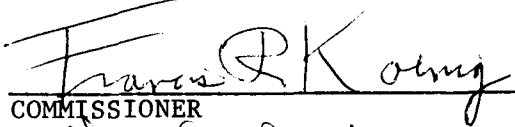
D. That the petition of Louis C. Ostrer is denied and the notices of deficiency are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985


PRESIDENT


COMMISSIONER


COMMISSIONER