

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Aron & Kathe Feureisen	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Years 1974,	:	
1975 and 1976.	:	

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 15th day of April, 1986, he/she served the within notice of Decision by certified mail upon Aron & Kathe Feureisen the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Aron & Kathe Feureisen
835 51st St.
Brooklyn, NY 11220

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
15th day of April, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Aron & Kathe Feuereisen : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for :
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22 and 30 of the Tax Law for the Years 1974, :
1975 and 1976. :

State of New York :
ss.:
County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 15th day of April, 1986, he served the within notice of Decision by certified mail upon Meissner, Tisch & Kleinberg, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Meissner, Tisch & Kleinberg
275 Madison Ave.
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
15th day of April, 1986.

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

David Parchuck

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

April 15, 1986

Aron & Kathe Feuereisen
835 51st St.
Brooklyn, NY 11220

Dear Mr. & Mrs. Feuereisen:

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 & 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: Taxing Bureau's Representative

Petitioner's Representative:

Meissner, Tisch & Kleinberg
275 Madison Ave.
New York, NY 10016

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ARON AND KATHE FEUEREISEN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Articles
22 and 30 of the Tax Law for the Years 1974,
1975 and 1976.

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DECISION
:
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Petitioners, Aron and Kathe Feuereisen, 835 51st Street, Brooklyn, New York 11220, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law for the years 1974, 1975 and 1976 (File No. 42763).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1986 at 10:45 A.M. Petitioners appeared by Meissner, Tisch & Kleinberg, Esqs. (George Meissner and Donald Wall, Esqs., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether during the years in question petitioner Aron Feuereisen received but failed to report income from certain illegal activities, thus being liable for tax due on such income together with a fifty percent penalty for fraud as determined by the Audit Division.

FINDINGS OF FACT

1. On February 11, 1982, the Audit Division issued two notices of deficiency to petitioners, Aron and Kathe Feuereisen, asserting additional tax due for the

years 1974, 1975 and 1976 (including New York City personal income tax for 1976) in the aggregate amount of \$780.75, plus a fifty percent fraud penalty [Tax Law §685(e)] and interest.¹

2. The above deficiency is premised upon the assertion that petitioner received illegal kickbacks in the amounts of \$7,200.00 for 1974, \$6,000.00 for 1975 and \$750.00 for 1976, and intentionally failed to include such amounts as income during the years in issue.

3. Subsequent to issuance of the aforementioned notices of deficiency, petitioner made payment and hence seeks a refund of the amounts paid plus interest.

4. The deficiencies in question arose out of a special investigation of nursing homes by the New York State Attorney General's Office. More specifically, in 1979, petitioner and one Laszlo Szanto were indicted (Supreme Court, Queens County, Indictment No. 133-79) as co-defendants on a total of thirty counts with respect to an alleged kickback scheme at Far Rockaway Nursing Home ("Far Rockaway"). The counts of the indictment were as follows:

- conspiracy in the third degree (1 count)
- grand larceny in the second degree (1 count)
- offering a false instrument for filing in the first degree (1 count)
- falsifying business records in the first degree (11 counts)
- willful violation of health laws (14 counts)
- attempt to evade tax (2 counts)

5. Petitioner, Mr. Szanto and others owned Far Rockaway, a partnership, during the years in question. Petitioner also worked in the kitchen at Far Rockaway, with his sole responsibility being to assure that foods were supplied

¹ Kathe Feuereisen's name appears solely by virtue of the filing of joint tax returns with Aron Feuereisen. Accordingly, unless otherwise noted, all references herein to petitioner shall refer to Aron Feuereisen.

and prepared at Far Rockaway in accordance with kosher dietary laws. Due to ongoing severe disagreements with Mr. Szanto, petitioner arranged his work schedule around Mr. Szanto's schedule such that the two rarely, if ever, were at Far Rockaway at the same time. Petitioner spent his working time at Far Rockaway in the kitchen.

6. On June 18, 1981, petitioner pleaded guilty to Conspiracy in the Sixth Degree (a Class B Misdemeanor) and to two violations of the Public Health Law (unclassified misdemeanors) in full satisfaction of the charges against him under Indictment Number 133-79. On October 23, 1981, petitioner was sentenced to a fine of \$2,500.00 in connection with the above offenses as pleaded to.

7. Petitioner's co-defendant, Mr. Szanto, has yet to be arraigned on any of the charges under the indictment, having fled the jurisdiction to avoid prosecution. He remains a fugitive from justice and is believed to have returned to his native country of Hungary.

8. The minutes of petitioner's plea allocution (Supreme Court, Queens County, Balbach J.) reveal that petitioner pleaded guilty to a violation of Penal Law section 105 by conspiring with Mr. Szanto and one Sam Froehlich, a vendor, to violate Public Health Law section 12(b)(2). Specifically, petitioner conspired with, aided and abetted Mr. Szanto in the latter's acceptance of a rebate of money (a kickback). This plea was an "Alford" plea (North Carolina v. Alford, 400 U.S. 25), a rarely accepted plea under which an accused is allowed to assert his innocence but plead guilty to avoid a trial. Here, petitioner and his wife (now deceased) were elderly and in poor health and sought to avoid the time, expense, stress and tension of a lengthy trial.

9. The minutes also reveal that, while petitioner knew of the kickback scheme, it was Mr. Szanto who received the kickback money, was in full control

of the scheme, filed a false RHCF-1 (a nursing home reimbursement document filed with the State), and was the speaker on all but one of several surreptitious tape recordings made by investigators. The minutes further indicate that petitioner did not receive any kickback monies nor did he make any false entries in the books or records of Far Rockaway.

10. The amounts of tax at issue herein were computed upon alleged kickbacks to petitioner of \$7,200.00 for 1974, \$6,000.00 for 1975 and \$1,000.00 for 1976. These figures were transmitted orally to the Audit Division by the Attorney General's Office and were estimated amounts set at \$600.00 per month for 1974, \$500.00 per month for 1975 and \$1,000.00 (in total) for 1976.

11. At petitioner's sentencing, the Court (Justice Balbach) noted that "I am satisfied that the real principal in this matter is Mr. Szanto who is not before the Court." The Court also recommended that petitioner receive a certificate of relief from civil disabilities and also retain licensure as a nursing home operator.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law for the year 1976 is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That, as the facts reveal and as is consistent with the nature of petitioner's guilty plea in Supreme Court, petitioner did not receive any kickbacks of money during the years in question. Rather, petitioner admitted to knowledge of and aiding in Mr. Szanto's scheme to receive kickbacks of money from a vendor to Far Rockaway. However, since petitioner did not receive any of the alleged

additional funds in any of the years in question, there was no failure by petitioner to report income and pay taxes due thereon, nor any false or fraudulent filing by petitioner.

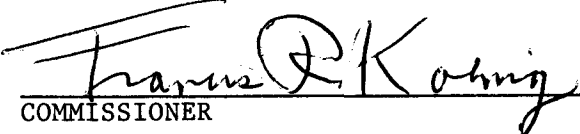
C. That the petition of Aron and Kathe Feuereisen is hereby granted, the notices of deficiency dated February 11, 1982 are cancelled and petitioner's claims for refund, together with such interest as is lawfully due, are granted.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER