

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Estate of Samuel Rosenthal :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law, New York City :
Personal Income Tax under Chapter 46, Title T :
of the Administrative Code of the City of :
New York and New York State Unincorporated :
Business Tax under Article 23 of the Tax Law :
for the Year 1980.

State of New York :

ss.:

County of Albany :

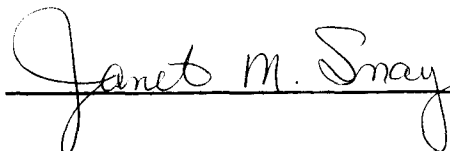
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 30th day of January, 1987, he/she served the within notice of decision by certified mail upon Estate of Samuel Rosenthal the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

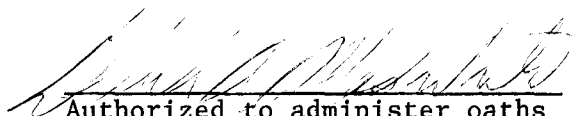
Estate of Samuel Rosenthal
c/o Fred Rosenthal & Charles Berkman
26 Court St.
Brooklyn, NY 11242

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 January, 1987.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Estate of Samuel Rosenthal :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Refund :
of New York State Personal Income Tax under
Article 22 of the Tax Law, New York City :
Personal Income Tax under Chapter 46, Title T
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State of New York :
ss.:
County of Albany :

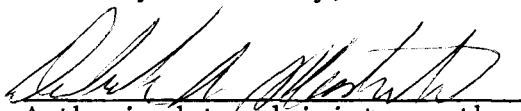
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 30th day of January, 1987, he served the within notice of decision by certified mail upon Fred R. Rosenthal, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

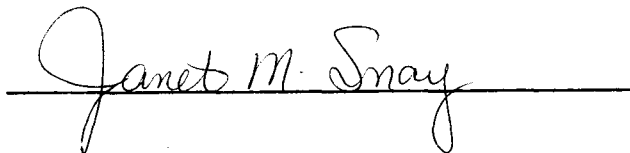
Fred R. Rosenthal
133 Joseph Avenue
Staten Island, NY 10314

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 January, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

January 30, 1987

Estate of Samuel Rosenthal
c/o Fred Rosenthal & Charles Berkman
26 Court St.
Brooklyn, NY 11242

Gentlemen:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Fred R. Rosenthal
133 Joseph Avenue
Staten Island, NY 10314

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ESTATE OF SAMUEL ROSENTHAL : DECISION

for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law, New York City :
Personal Income Tax under Chapter 46, Title T :
of the Administrative Code of the City of New :
York and New York State Unincorporated Business :
Tax under Article 23 of the Tax Law for the :
Year 1980.

Petitioner, Estate of Samuel Rosenthal, c/o Fred Rosenthal & Charles Berkman, 26 Court Street, Brooklyn, New York 11242, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law, New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York and New York State unincorporated business tax under Article 23 of the Tax Law for the year 1980 (File No. 51640).

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 July 15, 1986 at 2:45 P.M., with all briefs to be submitted by September 1, 1986. Petitioner appeared by Fred R. Rosenthal, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether an adjustment attributing additional income to Samuel Rosenthal as the result of a New York City audit was proper.

FINDINGS OF FACT

1. Samuel Rosenthal (hereinafter "the decedent") timely filed a 1980 New York State Income Tax Resident Return (with City of New York Personal Income Tax) whereon he reported net business income from the operation of his taxi cab of \$3,817.00. According to a copy of his 1980 Federal Schedule C annexed thereto, his gross receipts were reported as \$13,406.00 and his total deductions were reported as \$9,589.00.

2. On April 21, 1983, the Audit Division issued a Statement of Audit Changes to the decedent wherein an adjustment of \$37,032.00 was made for New York State and City personal income tax purposes as well as for New York State unincorporated business tax purposes. The adjustment was explained on said statement as follows:

"Under authorization of Section T46-197(f) of the New York City Tax Law, we have received notification of New York City audit change and the following deficiency is based on failure to report such changes to New York State."

3. Based on the aforesaid statement, a Notice of Deficiency was issued against the decedent on June 10, 1983 asserting New York State personal income tax of \$3,449.16, New York City personal income tax of \$1,242.25 and New York State unincorporated business tax of \$1,233.96 plus, interest of \$1,569.41, for a total due of \$7,494.78.

4. It was determined from the New York City audit of the decedent's taxi cab operation that his net profit for 1980 was \$40,849.00. Reducing this amount by the net profit reported of \$3,817.00, yields the adjustment at issue of \$37,032.00.

5. The City audit resulted in a deficiency asserted by New York City for City unincorporated business tax only.

6. The decedent died on September 3, 1985. His son, Fred Rosenthal, is both his representative in this proceeding and the executor of his estate.

7. The decedent's representative alleged that the New York City audit was erroneous for various reasons. However, he offered no documentation to support such allegation. He claimed that the City Department of Finance was in possession of all of the decedent's pertinent books and records.

8. The decedent's representative alleged that a hearing was scheduled with the City Department of Finance for July 21, 1986 with respect to the city adjustment at issue. Although he was granted until September 1, 1986 to submit either a New York City final determination or records relevant to the audit, no such documentation was forthcoming.

9. The decedent's representative contended that the deficiency at issue was previously paid in order to stop the accruing of additional interest. To support such contention he submitted a copy of his letter of December 30, 1985 and a copy of a check of the same date payable to the order of the New York State Department of Taxation and Finance for \$9,575.00. Said amount was comprised of the tax deficiency asserted herein plus interest to December 31, 1985. The Audit Division had no record of such payment being made or credited. Although the decedent's representative agreed to submit the original cancelled check as substantiation of such payment, he failed to do so.

CONCLUSIONS OF LAW

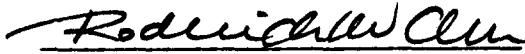
A. That the Estate of Samuel Rosenthal has failed to sustain its burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that the adjustment made as the result of the New York City audit was improper or erroneous. Accordingly, such adjustment is hereby sustained.

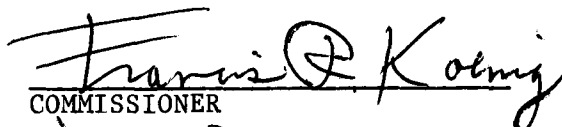
B. That the petition of the Estate of Samuel Rosenthal is denied and the Notice of Deficiency issued June 10, 1983 is sustained.

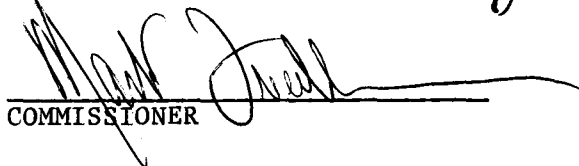
DATED: Albany, New York

STATE TAX COMMISSION

JAN 30 1987


PRESIDENT


COMMISSIONER


COMMISSIONER