

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LENZNER BROTHERS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business;
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1954 and 1956

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon

Lenzner Brothers (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Lenzner Brothers
c/o Leonard A. Shair
900 Bay Drive
Miami Beach, Florida 33141

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

10th day of May, 1972

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM LENZNER

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1954 & 1956 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of May , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon

William Lenzner (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William Lenzner
c/o Leonard A. Shair

900 Bay Drive
Miami Beach, Florida 33141

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

10th day of May , 1972 .

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS LENZNER, JR.

For a Redetermination of a Deficiency or
a Refund of Personal Income :
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1954 and 1956

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of May , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon

Louis Lenzner, Jr. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Louis Lenzner, Jr.
c/o Leonard A. Shair
900 Bay Drive
Miami Beach, Florida 33141

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

10th day of May , 1972

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LENZNER BROTHERS

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1954 & 1956 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of May , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon
Leonard A. Shair
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Leonard A. Shair
900 Bay Drive
Miami Beach, Florida 33141
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

10th day of May , 1972.

Lynn Wilson

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED:

Albany, New York
May 10, 1972

Lensner Brothers
c/o Leonard A. Shair
900 Bay Drive
Miami Beach, Florida 33141

Gentlemen:

Please take notice of the **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
386j of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **90 days** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
Nigel G. Wright

Hearing Officer

cc Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York
May 10, 1972

William Lenzner
c/o Leonard A. Shair
900 Bay Drive
Miami Beach, Florida 33141

Dear Sir:

Please take notice of the **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
375 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **90 days** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
Hearing Officer

cc Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

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A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

ADDRESS YOUR REPLY TO

DATED, Albany, New York
May 10, 1972

Louis Lenzner, Jr.
c/o Leonard A. Shair
900 Bay Drive
Miami Beach, Florida 33141


Dear Sir:

Please take notice of the **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
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in court to review an adverse decision must be commenced
within **90 days** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Nigel G. Wright
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

WILLIAM LENZNER AND LOUIS LENZNER, :
individually and as co-partners :
d/b/u the firm name and style of :
LENZNER BROTHERS :

for Revision or Refund of Unincorporated :
Business Taxes under Article 16-A of the :
Tax Law for the Years 1954 and 1956 :

In the Matter of the Application :

of :

WILLIAM LENZNER :

DETERMINATION

for Revision or Refund of Personal Income :
Taxes under Article 16 of the Tax Law for :
the Years 1954 and 1956 :

In the Matter of the Application :

of :

LOUIS LENZNER JR. :

for Revision or Refund of Personal Income :
Taxes under Article 16 of the Tax Law for :
the Years 1954 and 1956 :

The taxpayers having filed applications for revision of additional assessments of unincorporated business taxes under Article 16-A of the Tax Law for the years 1954 and 1956 and of personal income taxes under Article 16 of the Tax Law for the years 1954 and 1956, and such applications having been denied and a hearing having been demanded and duly held, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue herein is whether assessments may be made under Tax Law Section 373 more than three years after returns

STATION OF THE VESSEL

NAME OF THE VESSEL

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OF THE YEAR 1900

OF THE YEAR 1900

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are filed because of an omission of 25% of gross income where the amount omitted from gross income was included in net capital gain on the same return or on a related return.

2. Lenzner Brothers filed a 1954 unincorporated business tax and partnership return (IT-204) on November 1, 1955. This showed total income from business of \$19,443.44 and net income from business of \$15,554.75. This further showed the partner's distributive share of net income to be \$16,393.44 and of net capital gain to be \$85,241.69, each divided equally between the partners. Included in the capital gain was the amount of \$68,632.08 which had been reported on Schedule D of the partnership portion of the return.

3. A notice of additional assessment was issued October 24, 1962, under a one-year extension valid under Tax Law 373(5), adding to unincorporated business tax net income the amount of \$68,632.08, which had been reported on Schedule D of the return as capital gain.

4. The 1954 personal income tax returns of William Lenzner and Louis Lenzner were each filed on or about November 1, 1955, and each reported net income of \$7,696.72 and net capital gain of \$42,620.84. Included in each return was \$8,196.72 which was reported as income received from the partnership of Lenzner Brothers, care of L. A. Shair, 17 East 45 Street, New York 17, New York and \$42,620.84, reported as capital gain from a partnership.

5. Notices of additional assessment for 1954 were issued to each partner on October 24, 1962, under a one-year extension valid under Tax Law Section 373(5). Each assessment transferred from capital gain to normal tax the amount of \$34,316.04 being each partner's distributive share of the amount similarly treated on the partnership assessment. The additional tax due from each was \$1,178.46.

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which had been reported as finished at the time it was
to incorporate business but for which the amount of \$50,000.
was paid for a one-year period after the date of its closing.

It is noted that the corporation was organized by J. L. ...

The record.

[illegible]

each pattern on October 24, 1962, under a two-year contract which
5. Review of additional assignments for FBI was completed on
and \$41,000.00, reported as special, was from a contract
case of E. A. Galt, 47 East 42nd Street, New York
reported as known, received from the Division of Criminal Justice and

the partnership agreement. The additional fee for 2007 was \$1,178.46.

6. Lenzner Brothers filed a 1956 unincorporated business tax and partnership return (IT-204) on July 22, 1957. It showed for unincorporated business tax a total income from business of \$4,209.18 and total net income of \$3,367.34. It further reported distributive shares totaling \$4,209.18 for net income and \$21,812.43 for capital gain. (While the capital gain is divided evenly between the partners, the net income was distributed \$3,404.59 to William Lenzner and \$804.59 to Louis Lenzner.) Included in the capital gains were the amounts of \$8,522.81 and \$5,600.00 which had been fully reported on Schedule D of the partnership portion of the return.

7. A notice of additional assessment for 1956 was issued on October 24, 1962, adding to unincorporated tax net income the amounts of \$8,522.81 and \$5,600.00 representing amounts previously reported as capital gain.

8. The 1956 returns of William Lenzner and Louis Lenzner were filed on or about July 22, 1957. William Lenzner reported net income of \$3,064.13, and Louis Lenzner reported net income of "none". Each reported net capital gain of \$10,906.21. Included in the net income of each was the distributive share each received from the partnership (\$3,404.59 for William Lenzner and \$804.59 for Louis Lenzner) which was reported as income from the partnership of Lenzner Brothers, care of L.A. Shair, 17 East 45th Street. Also included was \$10,906.21 reported as capital gain from a partnership.

9. A notice of additional assessment was issued against each partner on October 24, 1962, transferring from capital gain to ordinary income the amount of \$7,061.40 representing one-half of the amount similarly treated on the partnership assessment. The additional tax due was \$73.66 from William Lenzner and \$30.01 from Louis Lenzner.

10. The income subject to assessment was fully disclosed on the partnership returns which themselves were attached to the unincorporated business tax returns and referred to by cross reference in the

6. The following information was furnished by the taxpayer:

and partnership return (10-1-57) on July 24, 1957. It showed the
undistributed earnings for the year ended 12-31-56 of \$2,100.00
and total liabilities of \$1,000.00. It further reported distributive
shares totaling \$2,100.00 to the partners and \$1,000.00 for capital
gain. (While the capital gain is listed evenly between the partners,
the net income was distributed \$1,000.00 to William L. Lerner and
\$1,100.00 to Louis Lerner. Included in the net and capital were the
amounts of \$1,000.00 and \$1,100.00 which had been fully reported
on Schedule D of the partnership return in the return.

7. A notice of additional assessment for 1956 was issued on
October 14, 1963, stating to the partnership that the amount
of \$1,000.00 and \$1,100.00 representing amounts previously reported
as capital gain.

8. The 1956 return of William L. Lerner and Louis Lerner was
filed on or about July 23, 1957. William Lerner reported net income
of \$1,000.00 and Louis Lerner reported net income of \$1,100.00.
Reported net capital gain of \$1,000.00. Included in the net income
of each was the distribution share each received from the partnership
(\$1,000.00 for William Lerner and \$1,100.00 for Louis Lerner) which

was reported as income from the partnership of Lerner Brothers,
care of L.A. Lerner, 17 East 10th Street, Los Angeles 44, California
reported as capital gain from a partnership.

9. A notice of additional assessment was issued against each
partner on October 14, 1963, summarizing that capital gain to
ordinary income the amount of \$1,000.00, representing one-half of the
amount, jointly invested in the partnership investment. The net
income tax due was \$1,000.00 from William Lerner and \$1,100.00 from Louis
Lerner.

10. The income return of Lerner Brothers was fully disclosed on the
partnership return which showed on what should be the partnership
business (Lerner Brothers) for the year ended 12-31-56.

personal income tax returns.

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission

DETERMINES:

A. The three-year assessment period applies where there is adequate disclosure of the asserted additional income in question. All returns here in question give such disclosure (See *Genevieve B. Walker v C.I.R.* 46 T.C. 630).

B. The application for revision is granted, and the assessments are cancelled in full.

DATED: Albany, New York

May 10, 1972

STATE TAX COMMISSION

COMMISSIONER

Bruce Manley

COMMISSIONER

Walter Kuerst

COMMISSIONER

personal income tax returns.

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission

ORDERED:

1. The three-year assessment period herein is hereby extended to the date of the filing of the returns in question. All returns here in question give such disclosure (See General L.R. 100-100).

2. The application for revocation is granted, and the assessments

are cancelled in full.

WATSON, Albany, New York

NOTICE OF DECISION

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