

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MANAGEMENT ASSOCIATES

:
:
:
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) 23 of the
Tax Law for the ~~(Year(s))~~ Fiscal Year ending
August 31, 1963

State of New York
County of Albany

Martha Funaro , 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 5th day of April , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Management
Associates (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Management Associates

2185 Fillmore Avenue
Buffalo, New York 14214

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

5th day of April , 1972.

Ral Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MANAGEMENT ASSOCIATES

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Taxes under Article(s) 23 of the
Tax Law for the ~~Year(s)~~ Fiscal Year ending
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State of New York
County of Albany

Martha Funaro , 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 5th day of April , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Ralph J. Gregg, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Ralph J. Gregg, Esq.
c/o Albrecht, Maguire, Heffern & Gregg
2110 Main Place Tower
Buffalo, New York
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

5th day of April , 1972.

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 5, 1972

**Management Associates
2185 Fillmore Avenue
Buffalo, New York 14214**

Dear Sirs:

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

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MANAGEMENT ASSOCIATES	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Fiscal Year ending August 31,	:	
1963.	:	

Management Associates petitioned for a redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the fiscal year ended August 31, 1963.

A formal hearing was held at the offices of the State Tax Commission at the State Office Building, Buffalo, New York on May 20, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Albrecht, Maguire, Heffern & Gregg, Ralph J. Gregg, Esq., of Counsel, and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel). At the hearing the parties presented a stipulation of facts and exhibits.

ISSUE

Was the tax return, Form IT-204 for the fiscal year ended August 31, 1963, filed by the taxpayer, a sufficient return, so as to start the running of the statute of limitations for purposes of Article 23?

FINDINGS OF FACT

1. Management Associates filed a partnership return on Form IT-204 for the fiscal year ended August 31, 1963 on or before December 15, 1963, the date when said return was due.

2. The New York State Income Tax Bureau audited the partnership returns of Management Associates in 1964 and on July 6, 1964, issued a final notice of a deficiency for the fiscal year ended

August 31, 1962, on the grounds that Management Associates was liable for the unincorporated business tax. At that time, it did not issue a similar notice of deficiency for the fiscal year ended August 31, 1963.

3. The assessment for the fiscal year ended August 31, 1962, was the subject of a formal hearing on August 20, 1965.

4. The three-year period of the statute of limitations applicable to tax returns due on December 15, 1963 expired on December 15, 1966.

5. On October 27, 1969, the State Tax Commission issued a determination sustaining the deficiency for the fiscal year ended August 31, 1962. The amount of the deficiency was thereafter paid with interest.

6. On August 31, 1970, the Income Tax Bureau issued a 90-day deficiency notice to Management Associates for the fiscal year ended August 31, 1963, asserting a deficiency of \$664.00 plus interest on the grounds that Management Associates was liable for unincorporated business taxes in that amount.

7. The parties agree that the statute of limitations has expired as to all of the schedules of the partnership return, Form IT-204, for the fiscal year ended August 31, 1963, except Schedules U-A, U-B, U-C and U-D.

8. Management Associates has timely filed a petition for a redetermination of the deficiency on Form IT-95 on the grounds that the deficiency is barred by the statute of limitations.

9. The prior determination for the fiscal year ended August 31, 1962, indicates that the partnership return filed by Management Associates disclosed receipts of \$29,500.00, deductions of \$649.50 and distributions of the balance of \$20,850.00 to the partners.

10. In the instant case, the only items with figures are a deduction item on line 17 of the form filed for the year ended August 31, 1963, listing a tax deduction "unincorporated business

\$1,097.20" and a like loss on line 26, and an allocation of the same to the partners on Schedule K of the form.

11. For the fiscal year ended August 31, 1963, the instant case, the gross receipts line 1 of the partnership was blank and gross receipts were not disclosed. A statement was made: "All monies received and classified as engineering fees are in fact compensation for services rendered as employees, officers and directors of Weber, Loes, Weber Associates, Inc. and Thermal Components Inc." No receipts were disclosed on Schedules U-A, U-B, U-C and U-D or on any of the other schedules of the return.

12. The notice asserting a deficiency in unincorporated business tax under File No. P-2821 stated: "Based upon the determination of the State Tax Commission for the fiscal year ended August 31, 1962, dated October 27, 1969, your business activities constitute the carrying on of an unincorporated business." The notice also stated: "Business income adjusted per federal audit \$25,902.81." These figures could not be obtained anywhere on the tax form here in issue. No receipts were listed anywhere on either the partnership information return or the unincorporated business tax return.

13. Additionally, all other facts stipulated by the parties which are not inconsistent with the findings of facts stated herein, are found as stipulated.

CONCLUSIONS OF LAW

A. The schedules on the tax form here in issue were not completed anywhere so as to apprise anyone of any amount of receipts of the partnership. The form as filed was not a sufficient return and was not sufficient to start the running of the statute of limitations. Commissioner v. National Land and Construction Co., 70 Fed. 2d 349.

B. The petition is denied and the deficiency is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount of tax due until paid.

DATED: Albany, New York

April 5, 1972

STATE TAX COMMISSION

Raymond G. Gorman

COMMISSIONER

Robert M. Mauley

COMMISSIONER

Milton Kerner

COMMISSIONER

August 4, 1972

Ralph J. Gregg, Esq.
Albrecht, Maguire, Heffern & Gregg
Suite 2110
Main Place Tower
Buffalo, New York 14202

Re: Management Associates, Inc.

Dear Mr. Gregg:

This is in reply to your letter of July 26, 1972, regarding the above. My previous letter stated neither that the statute of limitations expired nor that the State is not bound by the statute. Citing authority, I stated that the information on the form filed was so scanty as to constitute no return; thus, the statute could not run.

We do not indulge in the practice of asserting wrongful claims knowing that the expense of disputing them outweighs the cost of payment. The Tax Commission will, of its own motion, cancel an assessment made beyond the statute. Conversely, it will find a protest in a letter by the taxpayer even though the proper form has not been filed within the statute of limitations.

The difference of opinion among officials of the Income Tax Bureau only gives evidence that reasonable

Ralph J. Gregg, Esq.

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August 4, 1972

men may differ. Certainly, the view that was in your clients' favor did not, by its expression, become the only one to be adopted. We will sometimes honor erroneous advice given a taxpayer where the taxpayer is prejudiced thereby. I find nothing to indicate that such advice was communicated to you; but even assuming that it was, nothing suggests that you were in any way put at a disadvantage.

Sincerely,

NORMAN GALLMAN
COMMISSIONER

ER/jvp