

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP J. & ZENA DAVIS

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated
Taxes under Article(s) 16 & 16-A of the Business
Tax Law for the (Year(s) 1957, 1958, :
and 1969.

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 14th day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip J. &
Zena Davis (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Philip J. Davis

200-19 45th Road
Bayside, New York 11361

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

14th day of January, 1974.

James S. Van Patten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION
Mario A. Procaccino,
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY
MILTON KOERNER

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
January 14, 1974

Mr. & Mrs. Philip J. Davis
200-19 45th Road
Bayside, New York 11361

Dear Mr. & Mrs. Davis:

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

Please take further notice that pursuant to
Section(s) **375 & 386j** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 days**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
PHILIP J. & ZENA DAVIS	:	DETERMINATION
	:	
for Revision or Refund of Personal	:	
Income Taxes and Unincorporated Business	:	
Taxes under Articles 16 and 16-A of the	:	
Tax Law for the Years 1957, 1958 and 1959.	:	
	:	
	:	

Philip J. and Zena Davis, filed applications for the revision of an assessment, dated October 26, 1966, for personal income taxes under Article 16 of the Tax Law for the years 1957 and 1959 in the amount of \$258.22 plus statutory charges of \$131.28 for a total of \$389.50. They also filed an application for the revision of an assessment, dated October 26, 1966, for unincorporated business tax under Article 16-A of the Tax Law for the years 1958 and 1959 in the amount of \$123.66 plus statutory charges of \$67.87 for a total of \$191.53. Said applications were denied and applicant duly filed demands for a hearing.

A hearing was duly held on June 14, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer, and said hearing was adjourned.

The petitioner appeared without a representative. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Francis X. Boylan, Esq. A further hearing was duly scheduled for

January 8, 1973, but the petitioner failed to appear. The record of the case has been duly examined and considered.

ISSUE

The sole issue in this case is whether the assessment is timely under section 373(1) because the taxpayer failed to file with the state a notice required by section 367(2) of changes made in his income by a Federal audit.

FINDINGS OF FACT

1. Mr. Philip J. Davis asserts that his accountant, Abraham Tannenbaum, of Queens County handled both his Federal and state tax matters. He has produced an affidavit of Mr. Tannenbaum to the effect that Mr. Tannenbaum mailed a notice of Federal changes to the state on April 28, 1964. An adjournment of the hearing was granted so that Mr. Tannenbaum could appear and testify but on the adjourned date, no one appeared.

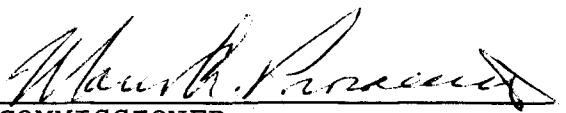
CONCLUSIONS OF LAW


The assertions of the taxpayer and the affidavit as to mailing cannot be credited where, as here, the taxpayer was given a chance to produce the witness and he has failed to do so.

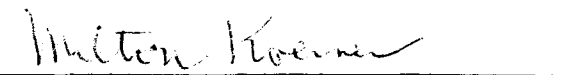
The assessment herein is found to be correct and is due together with such further interest computed under section 376 of the Tax Law.

DATED: Albany, New York
January 9, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER