

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS ROSENBERG, (deceased)
By ESTA ROSENBERG, Administratrix

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) 1960, 1961, :
and 1962.

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 Louis Rosenberg Estate
Administratrix
Esta Rosenberg, (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Louis Rosenberg Estate
Esta Rosenberg, Administratrix
233 East 3rd Street & 299 B'way
New York, 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

14th day of January, 1974.

James S. Van Patten

Martha Funaro

14th day of January, 1974.



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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino,
~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

AREA CODE 518
457-2655, 6, 7

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 14, 1974

Louis Rosenberg Estate
Esta Rosenberg, Administratrix
233 East 3rd Street & 299 B'way
New York, New York

Dear Mrs. Rosenberg:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
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 Petition :
of :
LOUIS ROSENBERG, (deceased) : DECISION
By ESTA ROSENBERG, Administratrix :
for a Redetermination of Deficiency :
or for Refund of Unincorporated :
Business Tax under Article 23 of the :
Tax Law for the Years 1960, 1961 and 1962.:
:

Louis Rosenberg, (deceased) by Esta Rosenberg as administratrix, filed a petition on July 22, 1966, for refund of unincorporated business taxes paid under Article 23 of the Tax Law in the amount of \$1,884.70 for the years 1960, 1961 and 1962.

A hearing was duly held on October 17, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant was represented by Sam Boodman, C.P.A. of Schoolman & Company. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the taxpayer's petition was timely filed.

FINDINGS OF FACT

1. Taxpayer filed timely tax returns (form IT-202) for 1960, 1961 and 1962 unincorporated business taxes. He listed on each return that his business was city marshal and paid \$435.66, \$793.41 and \$655.63 for 1960, 1961 and 1962 respectively.

2. Following an opinion of counsel dated December 5, 1963, the Income Tax Bureau held a city marshal to be an employee and therefore exempt from the unincorporated business tax. Refunds were granted for years beginning in 1963.

The petition filed in 1966 was very clearly not timely with respect to the years in question under the provisions of the Tax Law.

The special statutory authority under section 697 (c) of the Tax Law will not be exercised in the taxpayer's favor. That authority will be applied only where the refund is based upon a mistake which is patently a mistake on the face of the return. Prior to 1963, there had been no ruling with respect to the taxability of city marshals in general and certainly no ruling with respect to this taxpayer. At the time these returns were filed, the issues underlying the refund claim were clearly close questions of fact.

DATED: Albany, New York
January 14, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

Louis Rosenberg Estate
Esta Rosenberg, Administratrix
233 East 3rd Street & 299 B'way
New York, New York

W. WRIGHT
BLDG #9



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12226

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EDWARD ROOK
SECRETARY TO
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STATE TAX COMMISSION

Mario A. Procaccino,
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January 14, 1974

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Very truly yours,

Nigel G. Wright

HEARING OFFICER

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cc: Petitioner's Representative
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DATED: Albany, New York
January 14, 1974

STATE TAX COMMISSION

Wanda A. Perazich
COMMISSIONER

George Moulton
COMMISSIONER

Milton Koehn
COMMISSIONER

class questions of fact, the facts in controversy were clearly
and definitely in issue with respect to this contract. Although these
facts are referred to in the contract as facts, they are not referred
to as such in the contract, and the facts in controversy are not
clearly and definitely in issue with respect to this contract.

RECEIVED
JANUARY 13, 1961

1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1

REF ID: A61410

04-07321-01

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