

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LOUIS ROSENBERG, (deceased)
BY ESTA ROSENBERG, Administratrix :
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) 1959. :

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

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 Sam Boodman, C.P.A.,
Schoolman & Company (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sam Boodman, C.P.A.
Schoolman & Company
10 East 40th Street
New York, New York 10016
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.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS ROSENBERG, (deceased)

By ESTA ROSENBERG, Administratrix :

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) 1959. :

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

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 , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Louis Rosenberg Estate
Esta Rosenberg, Administratrix, (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.

Joyce S. Van Patten

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
Mario A. Procaccino
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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 **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 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	:	
LOUIS ROSENBERG, (deceased)	:	
By ESTA ROSENBERG, Administratrix	:	DETERMINATION
for Revision or Refund of Unincorporated	:	
Business Tax under Article 16-A of the	:	
Tax Law for the Year 1959.	:	

Louis Rosenberg, (deceased) by Esta Rosenberg as administratrix, filed an application on July 22, 1966, under Article 16-A of the Tax Law for refund of unincorporated business taxes paid under Article 16-A of the Tax Law in the amount of \$180.53 for the year 1959. Said application was denied and a hearing was demanded.

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, CP.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 application was timely filed.

FINDINGS OF FACT

1. Taxpayer filed a timely 1959 tax return (form IT201) for both personal income and unincorporated business tax. He listed his business as city marshal and paid \$180.53 for unincorporated business tax.

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.

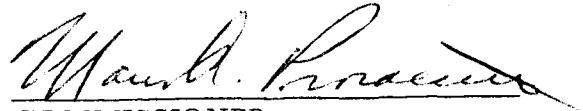
CONCLUSIONS OF LAW

The application 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 373.3 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

RECEIVED
ALBANY
JUN 11 1973

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



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

Mario A. Procaccino

~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

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 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 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 :

LOUIS ROSENBERG, (deceased) :
By ESTA ROSENBERG, Administratrix :

DETERMINATION

for Revision or Refund of Unincorporated :
Business Tax under Article 16-A of the :
Tax Law for the Year 1959. :

Louis Rosenberg, (deceased) by Esta Rosenberg as administratrix, filed an application on July 22, 1966, under Article 16-A of the Tax Law for refund of unincorporated business taxes paid under Article 16-A of the Tax Law in the amount of \$180.53 for the year 1959. Said application was denied and a hearing was demanded.

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, CP.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 application was timely filed.

FINDINGS OF FACT

1. Taxpayer filed a timely 1959 tax return (form IT201) for both personal income and unincorporated business tax. He listed his business as city marshal and paid \$180.53 for unincorporated business tax.

IN THE MATTER OF THE ESTATE OF

JOHN J. ROSS, JR.

Decedent's last will and testament, dated and proved to the satisfaction of the court, is on file in the County of New York, State of New York, in the Office of the Clerk of the Court, in the City of New York, under the file number of 1000-1000-1000.

The undersigned, (hereinafter referred to as the "Executor"), is the Executor of the last will and testament of the decedent, and is authorized to execute the same.

That application of this will, made by the Executor, is for the purpose of the execution of the same, and for the purpose of the distribution of the assets of the estate of the decedent.

For the purpose of the execution of the same, the Executor is authorized to execute the same, and for the purpose of the distribution of the assets of the estate of the decedent.

For the purpose of the execution of the same, the Executor is authorized to execute the same, and for the purpose of the distribution of the assets of the estate of the decedent.

was being and is being executed.

A hearing was held on the 15th day of May, 1961, at the office of the

State Tax Commission, at the City of New York, New York, and the

Commissioner of the State Tax Commission, at the City of New York, New York, and the

Commissioner of the State Tax Commission, at the City of New York, New York, and the

Commissioner of the State Tax Commission, at the City of New York, New York, and the

Commissioner of the State Tax Commission, at the City of New York, New York, and the

Witness my hand and seal this 15th day of May, 1961.

The Executor of the last will and testament of the decedent, and the

Witness my hand and seal this 15th day of May, 1961.

Witness my hand and seal this 15th day of May, 1961.

Witness my hand and seal this 15th day of May, 1961.

Witness my hand and seal this 15th day of May, 1961.

Witness my hand and seal this 15th day of May, 1961.

Witness my hand and seal this 15th day of May, 1961.

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.

CONCLUSIONS OF LAW

The application 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 373,3 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

Wanda H. Proulx
COMMISSIONER

Bruce Hanley
COMMISSIONER

Mittin Korman
COMMISSIONER

SECRET

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL