

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A.J. LAURITANO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Unincorporated Business
Taxes under Article ~~(x)~~ 23 of the
Tax Law for the Year(s) ~~xxxxxx~~ 1967
and 1968.

State of New York
County of Albany

Carmen Mottolese, 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 20th day of August, 1976, she served the within
Notice of Decision by (certified) mail upon Dr. A.J. Lauritano

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Dr. A.J. Lauritano
2 Mt. Tom Road
New Rochelle, New York 10805

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 Postal Service within the State of New York.

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

20th day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A.J. LAURITANO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) :
~~XXXXXXXXXX~~
1967 and 1968.

State of New York
County of Albany

Carmen Mottolese, 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 20th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Milton Pickman, C.P.A., (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Milton Pickman, C.P.A.
Anchin, Block & Anchin
270 Madison Avenue
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 Postal Service within the State of New York.

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

20th day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A.J. LAURITANO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~1967 and 1968~~ :
1967 and 1968.

State of New York
County of Albany

Carmen Mottolese, 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 20th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Frank R. Giacobino, PA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Frank R. Giacobino, PA
157-03 29th Avenue
Flushing, New York 11354

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 Postal Service within the State of New York.

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

20th day of August, 1976

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 20, 1976

TELEPHONE: (518) **437-3850**

Dr. A.J. Lauritano
2 Mt. Tom Road
New Rochelle, New York 10805

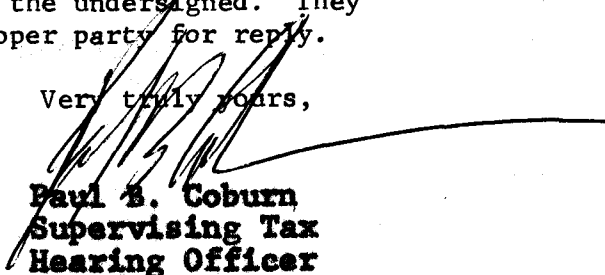
Dear Dr. Lauritano:

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

Please take further notice that pursuant to
Section(x) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
A. J. LAURITANO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967 and 1968.	:	

Petitioner, A. J. Lauritano, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967 and 1968. (File No. 72206293). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on September 30, 1974, at 3:00 P.M. Petitioner appeared by Anchin, Block & Anchin, (Milton Pickman, C.P.A., of counsel), and by Frank R. Giacopino, P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Was petitioner, A. J. Lauritano, entitled to a refund of New York State unincorporated business tax erroneously paid for the years 1967 and 1968, where his claims for refund were filed more than three years from the time the tax returns were filed and more than two years from the time the tax was paid?

FINDINGS OF FACT

1. Petitioner, A. J. Lauritano, and his wife filed a New York State combined income tax return for the year 1967. He did not indicate his occupation on the front of the return. However, on Schedule A, Line 5 of said return he stated that he had business income of \$23,111.00 derived from his activities as a physician. He also filed a New York State unincorporated business tax return for said year in which he reported total business income of \$23,110.71. He reported unincorporated business tax due of \$539.52 which sum was paid. He did not indicate the nature of his business activities on said return. These returns were filed on or about April 15, 1968.

2. Petitioner, A. J. Lauritano, and his wife filed a New York State income tax resident return for the year 1968. He did not indicate his occupation on the front of the return nor did he fill out Schedule A of said return. He also filed a New York State unincorporated business tax return for said year in which he reported total business income of \$30,159.10. He reported unincorporated business tax due of \$1,108.74, which sum was paid. He did not indicate the nature of his business activities on said return. These returns were filed on or about April 15, 1969.

3. On May 17, 1972, petitioner, A. J. Lauritano, filed a claim for credit or refund of unincorporated business tax paid for the year 1967 in the sum of \$539.52 and a claim for credit

or refund of unincorporated business tax paid for the year 1968 in the sum of \$1,108.74. The claims for refund were filed more than three years from the time the tax returns were filed and more than two years from the time the tax was paid.

4. On March 26, 1973, the Income Tax Bureau denied petitioner, A. J. Lauritano's claims for credit or refund of unincorporated business tax paid for the years 1967 and 1968. The Income Tax Bureau granted similar claims for credit or refund for the years 1969, 1970 and 1971.

5. Petitioner, A. J. Lauritano, was a duly licensed physician in New York State during the years 1967 and 1968. His income in the sum of \$23,110.71 for the year 1967 and \$30,159.10 for the year 1968 was derived from his activities as such a physician.

CONCLUSIONS OF LAW

A. That the income received by petitioner, A. J. Lauritano, during the years 1967 and 1968, from his activities as a physician, was exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law; that such income was reported as income subject to the unincorporated business tax on his returns and unincorporated business tax paid thereon under a mistake of fact within the meaning and intent of section 697(d) of the Tax Law; that his claim for credit or refund of said payments involve no questions of law and fact in accordance with the meaning and intent of said section;

and that, therefore, the State Tax Commission at any time, without regard to the period of limitation provided for in section 687(a) of the Tax Law, has the power to grant said refund in accordance with the meaning and intent of section 697(d) of the Tax Law.

B. That the petition and claims for credit or refund of unincorporated business tax paid for the years 1967 and 1968, of petitioner, A. J. Lauritano, are granted and the Income Tax Bureau is hereby directed to refund to him the sum of \$539.52 for the year 1967 and \$1,108.74 for the year 1968, together with such interest as may be lawfully due.

DATED: Albany, New York
August 20, 1976

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER