

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEROY BARNES, JR. AND PAULINE BARNES :

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~~ :
1970, 1971, 1972 and 1973.

State of New York
County of Albany

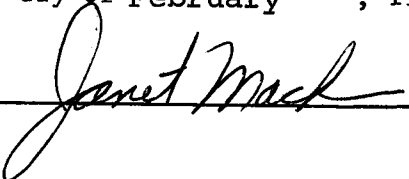
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978, he served the within
Notice of Decision by (certified) mail upon Leroy, Jr. & Pauline
Barnes (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Leroy Barnes, Jr.
749 East 218th Street
Bronx, New York 10467

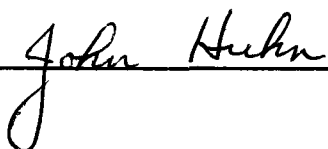
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

14th day of February , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEREOY BARNES, JR. AND PAULINE BARNES :

AFFIDAVIT OF MAILING

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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~~ :
1970, 1971, 1972 and 1973.

State of New York
County of Albany

John Huhn , 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 February , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Benjamin F. Blake

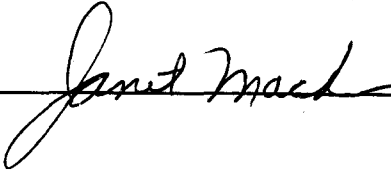
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Benjamin F. Blake, Esq.
2615 Cadillac Tower
Detroit, Michigan 48226

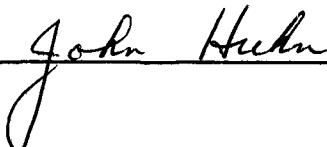
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of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

14th day of February , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEROY BARNES, JR. AND PAULINE BARNES :

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) ~~xxx Period(x)~~ :
1970, 1971, 1972 and 1973.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Marshall J. Gluck

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Marshall J. Gluck, Esq.

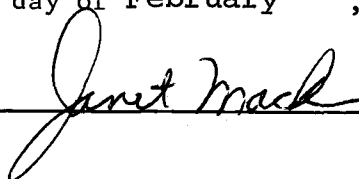
Koch & Gluck
437 Madison Avenue
New York, New York 10022

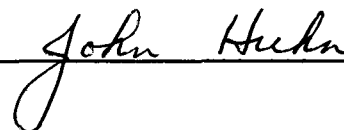
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of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

14th day of February , 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

February 14, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. & Mrs. Leroy Barnes, Jr.
749 East 218th Street
Bronx, New York 10467

Dear Mr. & Mrs. Barnes:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(b) 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Aloysius J. Mendonza
Assistant Director

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEROY BARNES, JR. AND PAULINE BARNES : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1970, 1971, 1972 and 1973. :
:

Petitioners, Leroy Barnes, Jr. and Pauline Barnes, residing at 749 East 218th Street, Bronx, New York 10467, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970, 1971, 1972, and 1973. (File No. 10939).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1976 at 10:45 A.M. Petitioners appeared by Benjamin F. Blake, Esq. and Marshall J. Gluck, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether petitioners have shown that their failure to file unincorporated business tax returns and to pay unincorporated business tax was due to reasonable cause and not due to wilful neglect, and that the penalties imposed on account of such failure should, therefore, be cancelled.

II. Whether the penalties for failure to file declarations of estimated tax or to make payments of estimated tax were properly imposed against petitioners.

III. Whether interest based on the deficiency in tax may be waived.

FINDINGS OF FACT

1. Petitioners, Leroy Barnes, Jr. and Pauline Barnes, failed to file New York State unincorporated business tax returns for the years 1970 through 1973, on or before the prescribed date for filing such returns.

2. On August 25, 1975, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against the petitioners, imposing unincorporated business tax upon the income received by petitioners during the years 1970 through 1973. It also imposed penalties pursuant to section 685(c) of the Tax Law for the underestimation of tax, as well as penalties pursuant to section 685(a)(1) and (2) of the Tax Law for failure to file New York State unincorporated business tax returns and pay said tax for said years. The deficiency, with penalty and interest, totaled \$61,643.54 as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1970	\$ 2,184.00	\$ 1,098.55	\$ 571.42	\$ 3,853.97
1971	14,434.85	6,611.15	2,910.64	23,956.64
1972	13,265.95	5,439.04	2,349.67	21,054.66
1973	8,799.73	3,079.91	898.63	12,778.27
	<u>\$38,684.53</u>	<u>\$16,228.65</u>	<u>\$6,730.36</u>	<u>\$61,643.54</u>

3. The portion of the total penalty imposed against petitioners pursuant to section 685(c) was the sum of \$1,347.95, and the portion of the total penalty imposed against petitioners pursuant to section 685(a)(1) and (2) was the sum of \$14,880.70.

4. At the hearing held on December 13, 1976, counsel for petitioners stated: "We have been authorized to concede on their behalf that the taxpayers be subject to the unincorporated business tax for the years in question and, in view of this concession, a request is formally being made for a waiver of interest and penalties for the years in question so that the taxpayers' only liability will be of the deficiency as determined."

5. Counsel for petitioners further stated at the hearing that the request for waiver of penalty and interest was being made "because the taxpayers had reasonable cause to believe that they were not subject to the unincorporated business tax upon the advice of the tax counsel who assisted them in preparing the various items submitted to the State."

6. Petitioners' New York State income tax returns for the years 1970 and 1972 and their amended New York State income tax returns for the year 1971, all of which were dated April 16, 1973, were prepared by Richard R. Harris, Attorney at Law, 8800 W. McNichols, Detroit, Michigan, 48221. Petitioners' New York State income tax return for the year 1973 was prepared by the law firm of Bolden and Blake, 2615 Cadillac Tower, Detroit, Michigan 48226.

7. Petitioners claim that their failure to file unincorporated business tax returns and pay unincorporated business tax was due to their reliance upon the advice of the Michigan attorneys who prepared their New York State income tax returns for the years in question.

CONCLUSIONS OF LAW

A. That in the absence of a showing of additional mitigating factors, it was not reasonable for the petitioners to rely on Michigan attorneys as to matters involving the New York State Tax Law. Accordingly, petitioners have not sustained the burden of proof to show that their failure to file unincorporated business tax returns and pay unincorporated business tax was due to reasonable cause and not due to wilful neglect. The penalties imposed against petitioners in the sum of \$14,880.70, pursuant to section 685(a)(1) and (2) of the Tax Law for the years 1970 through 1973, are justified.

B. That the penalties in the sum of \$1,347.95 pursuant to section 685(c) of the Tax Law, for failure to file a declaration of estimated tax or to make payment of estimated tax for the years 1970 through 1973, were properly imposed against petitioners.

C. That interest was properly asserted against petitioners on the underpayment of tax for the years 1970 through 1973 in accordance with the provisions of sections 684 and 722 of the Tax Law. The Tax Law does not authorize waiver of interest by the Tax Commission.

D. That the petition of Leroy Barnes Jr. and Pauline Barnes is denied and the Notice of Deficiency issued on August 25, 1975 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO.. Ms.. Davis.....

Please associate with original
decision.

3/20/78

M-75(8/76)

From Aloysius Nendza



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

February 14, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
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Sincerely,

Aloysius J. Nendza
Assistant Director

cc: Petitioner's Representative
Taxing Bureau's Representative

FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

FEB 16 1978

1st Notice
2nd Notice
Return

Mr. & Mrs. Leroy Barnes, Jr.

749 East 218th Street

BRONX, New York 10467

Unknown

Insured

Insured

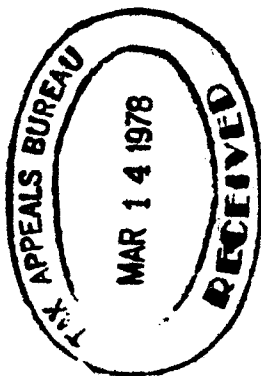
No such party in this state

Do not answer in this envelope

CERTIFIED

No. 404584

MAIL



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEROY BARNES, JR. AND PAULINE BARNES	:	DECISION
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