

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Morris & Mildred Solomon :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1969-1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Morris & Mildred Solomon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris & Mildred Solomon
4 Lake Dr.
Ellenville, NY 12428
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of July, 1980.

Deborah A. Bank

J. Vredenburg

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

July 18, 1980

Morris & Mildred Solomon
4 Lake Dr.
Ellenville, NY 12428

Dear Mr. & Mrs. Solomon:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MORRIS SOLOMON and MILDRED SOLOMON	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
for the Years 1969 through 1972.	:	

Petitioners, Morris Solomon and Mildred Solomon, 4 Lake Drive, Ellenville, New York 12428, 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 1969 through 1972 (File No. 12401).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on January 18, 1980 at 1:15 P.M. Petitioner Morris Solomon appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner Mildred Solomon is liable for unincorporated business tax.

II. Whether the Income Tax Bureau erroneously included in its Notice of Deficiency for unincorporated business tax, items of income not subject to unincorporated business tax.

III. Whether the Income Tax Bureau properly imposed penalties pursuant to sections 685(a) (1) and (2) of the Tax Law against petitioners for their failure to file unincorporated business tax returns for 1969 through 1972.

FINDINGS OF FACT

1. Petitioners, Morris Solomon and Mildred Solomon, filed New York State combined income tax returns for the years 1969 through 1972. They did not file any unincorporated business tax returns for said years.

2. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners for the years 1969 through 1972, imposing unincorporated business tax of \$2,092.92, plus penalties of \$1,052.15, and interest of \$452.75, for a total of \$3,597.82. This was done on the grounds that the activities of petitioner Morris Solomon constituted the carrying on of an unincorporated business, general insurance and real estate, and the income derived therefrom was subject to unincorporated business tax.

3. During the years in issue, Mildred Solomon did not have income from Morris Solomon's business activities.

4. On the 1969 personal income tax return, the petitioners failed to enter the items of income and adjustments from the Federal return on Schedule "A" on the back of the New York State return. On the 1970 return, the petitioners entered the items of income and adjustments on the Schedule "A", but erroneously included all income other than wages, dividends and interest under business income. For the years 1971 and 1972, the petitioners conceded the amounts shown on the Notice of Deficiency for petitioner Morris Solomon business income are correct, and those years are not at issue.

5. Petitioner Morris Solomon argued that the correct totals of income for the business are \$14,375.60 and \$12,485.88 for 1969 and 1970, respectively. These were the amounts shown on the accountant's workpaper which were derived from petitioners' Federal returns. The figures shown on the accountant's workpaper coincided with those figures in possession of the Audit Division. The petitioners stated that Federal returns were misplaced sometime after the Notice of Deficiency was issued.

6. The petitioners stated their reason for failure to file unincorporated business tax returns was that they did not know they were required to do so.

CONCLUSIONS OF LAW

A. That petitioner Mildred Solomon was not involved in Morris Solomon's business activities. The Audit Division is hereby directed to remove her name from the unincorporated business tax portion of the Notice of Deficiency which was issued on April 11, 1975.

B. That the correct amounts of business income subject to unincorporated business tax for petitioner Morris Solomon during the years 1969 and 1970 are \$14,375.60 and \$12,485.88, respectively.

C. That petitioner Morris Solomon's failure to file unincorporated business tax returns for the years at issue was not due to reasonable cause, and, therefore, all penalties imposed pursuant to section 685(a)(1) and (2) of the Tax Law are sustained.

D. That the petition of Morris Solomon and Mildred Solomon is granted only to the extent indicated in Conclusions of Law "A" and "B". The Audit Division is hereby directed to modify the Notice of Deficiency issued April 11, 1975; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUL 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

