

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Sarkis & Vahide Atlas

:

:

: AFFIDAVIT OF MAILING

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 1972 & 1973

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Sarkis & Vahide Atlas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sarkis & Vahide Atlas
62-40 Woodhaven Blvd.
Rego Park, NY 11374

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
5th day of June, 1981.

Connie P. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sarkis & Vahide Atlas :

: AFFIDAVIT OF MAILING

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 1972 & 1973 :

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon John Spence the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John Spence
3609 30th Ave.
Astoria, NY 11103

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
5th day of June, 1981.

Annie P. Hagelund

J. Vredenburg

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

June 5, 1981

Sarkis & Vahide Atlas
62-40 Woodhaven Blvd.
Rego Park, NY 11374

Dear Dr. & Mrs. Atlas:

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
John Spence
3609 30th Ave.
Astoria, NY 11103
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SARKIS ATLAS and VAHIDE ATLAS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 23 of the Tax Law for the Years	:	
1972 and 1973.	:	

Petitioners, Sarkis Atlas and Vahide Atlas, 62-40 Woodhaven Boulevard, Rego Park, New York 11374, 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 1972 and 1973 (File No. 28298).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1980 at 10:45 A.M. Petitioners, Sarkis Atlas and Vahide Atlas, appeared with John Spence. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner Sarkis Atlas' claim for refund or credit is barred by the running of the statute of limitation.

FINDINGS OF FACT

1. Petitioners, Sarkis Atlas and Vahide Atlas, filed amended joint New York State income tax resident returns for 1972 and 1973. Petitioner Sarkis Atlas also filed unincorporated business tax returns for said years.

2. Subsequent to filing his unincorporated business tax returns, petitioner Sarkis Atlas obtained knowledge that as a practicing dentist, he was not subject to unincorporated business tax. This knowledge was obtained by petitioner after the statute of limitations for filing a claim had already run.

On August 23, 1978, based on newly found knowledge, petitioner Sarkis Atlas filed claims for credit or refund, Form IT-113X, for 1972 in the amount of \$430.00 and for 1973 in the amount of \$289.00, for a total of \$713.00.

3. On April 30, 1979, the Audit Division denied petitioner's claim for refund on the basis that the claim was not filed within the statutory period of limitations.

4. The attorney for the Audit Division stipulated that petitioner was engaged in a profession which was not subject to nor liable for unincorporated business tax, but nevertheless held that petitioner's failure to file claim for refund or credit within the statutory period barred requested relief.

5. Petitioner Sarkis Atlas filed unincorporated business tax returns for years at issue as a result of mistake and lack of knowledge.

CONCLUSIONS OF LAW

A. That the Tax Commission at any time, without regard to any period of limitations, has the power to cause monies paid and erroneously held to be refunded where there are no questions of fact or law involved (section 722, incorporation of section 697(d) of the Tax Law). That petitioner Sarkis Atlas' practice of dentistry is a profession not deemed an unincorporated business (section 703(c), Tax Law), and, the monies paid by petitioner on the income generated therefrom were paid by him under a mistake of fact.

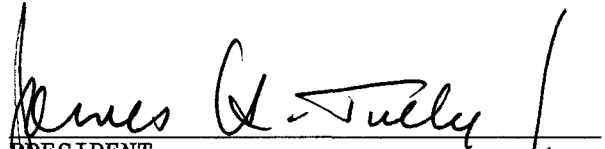
That under the facts of the case, a refund should be granted petitioner notwithstanding that his claim was filed after period of limitations.

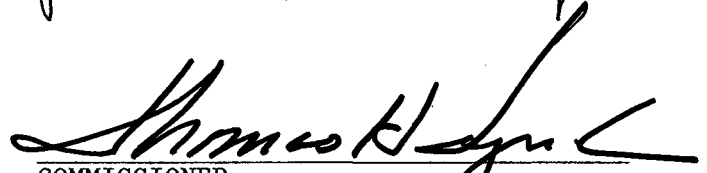
B. That the petition of Sarkis Atlas and Vahide Atlas is granted, and the Notice of Disallowance of Claim for Refund or Credit issued on April 30, 1979 is cancelled.

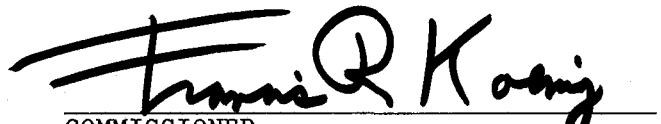
DATED: Albany, New York

STATE TAX COMMISSION

JUN 5 1981


PRESIDENT


COMMISSIONER


COMMISSIONER