

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter & Catherine Kourakos :
: 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 and 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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Peter & Catherine Kourakos, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

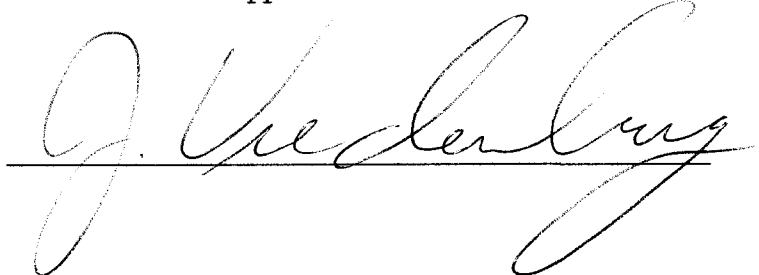
Peter & Catherine Kourakos
65 Mellon Lane
Jericho, NY 11753

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
14th day of August, 1981.


Anne A. Hagelund


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter & Catherine Kourakos :
: 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 and 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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Murray Appleman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Murray Appleman
225 Broadway
New York, NY 10007

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
14th day of August, 1981.

Annie A. Haglund

J. Vredenburg

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

August 14, 1981

Peter & Catherine Kourakos
65 Mellon Lane
Jericho, NY 11753

Dear Mr. & Mrs. Kourakos:

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
Murray Appleman
225 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER KOURAKOS and CATHERINE KOURAKOS	:	DECISION
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.	:	

Petitioners, Peter Kourakos and Catherine Kourakos, 65 Mellon Lane, Jericho, New York 11753, 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. 17945).

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 September 29, 1980 at 2:45 P.M. Petitioners appeared by Murray Appleman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioner Peter Kourakos' income from certain activities for 1972 and 1973 is subject to unincorporated business tax.

II. Whether petitioner Peter Kourakos' right to remain silent as to his source of income which is his constitutional privilege against self-incrimination provided under the Fifth Amendment of the Federal Constitution bars imposition of unincorporated business tax and penalties asserted thereon.

III. Whether such unincorporated business tax is barred by the Statute of Limitations, if the unincorporated business tax is not barred by constitutional privilege.

FINDINGS OF FACT

1. Petitioners, Peter Kourakos and Catherine Kourakos, filed New York State combined income tax resident returns for subject years. Petitioner Peter Kourakos did not file unincorporated business tax returns for the years at issue.

2. On December 20, 1976, the Audit Division issued a Notice of Deficiency against petitioners, together with an explanatory Statement of Audit Changes for 1972 and 1973 asserting unincorporated business tax of \$2,585.00, interest thereon of \$602.50, section 685(a)(1) and (a)(2) penalty of \$1,074.15 and section 685(c) penalty of \$96.67, for a total of \$4,358.32.

The issuance of the Notice of Deficiency and Statement of Audit Changes was based on petitioners' failure to supply information as to the source of "miscellaneous income" and based on said failure, petitioners were held subject to unincorporated business tax.

3. Petitioner Peter Kourakos contended that he is protected under the Fifth Amendment of the Federal Constitution from being required to divulge his source of "miscellaneous income". That his disclosure of same would result in a waiver of his privilege against self-incrimination, and this privilege he will not waive under any circumstances. Petitioner further contended that the exercise of this privilege estopped the assertion of the tax and penalty at issue.

Petitioner argued in the alternative that the three year period for assessment of unincorporated business tax has expired.

4. The adverse parties at the hearing stipulated that petitioner Catherine Kourakos was not engaged in nor involved with petitioner Peter Kourakos' activities, and therefore, not subject to unincorporated business tax.

CONCLUSIONS OF LAW

A. That petitioner Peter Kourakos failed to sustain the burden of proof required under section 689(e) of the Tax Law to show that his income was not subject to unincorporated business in accordance with the meaning and intent of section 701 of the Tax Law.

B. That the requirements that taxpayers shall prepare and file their tax returns do not violate taxpayer's privilege against self-incrimination under the Fifth Amendment or amount to involuntary servitude prohibited by the Thirteenth Amendment (J.B. Kasey (CA-9) 72-1 USTC par. 9307, 457 F2d 369). The fact that individuals are required to file Federal income tax returns is not a violation of their rights against self-incrimination (D.C. Irwin (CA-10), 77-2 USTC par. 9627). A subjective fear, without basis in fact, of criminal prosecution for tax evasion is not a ground for claiming the Fifth Amendment or refusing to testify concerning the tax deductions (G. Locke, 38 TCM 669, TC Memo 1979-153). Accordingly, the petitioner Peter Kourakos' right to remain silent as to his source of income which is his constitutional privilege against self-incrimination under the Fifth Amendment of the Federal Constitution, does not estop the State Tax Commission from imposing unincorporated business tax and applicable penalties.

C. That the three year period of limitation on assessment of unincorporated business tax does not apply when no tax return is filed; nor does it apply when a return is filed, but said return does not detail the nature of the business activity (Matter of Arbesfeld, Goldstein v. State Tax Commission, 62 A.D.2d 627). The filing requirements are not satisfied by the fact that the information necessary to compute the tax is furnished by a return filed for the purpose of

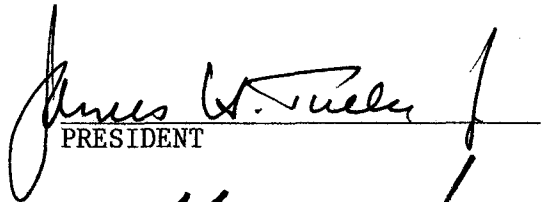
a different tax (Matter of Hewett v. Bates, 297 N.Y. 239). That since no return was filed by petitioner, the Statute of Limitations has not expired.

D. That the petition of Peter Kourakos and Catherine Kourakos is granted to the extent indicated in Finding of Fact "4"; that the Audit Division is hereby directed to modify the Notice of Deficiency issued on December 20, 1976; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as modified, is sustained, together with such interest and penalties as may be lawfully due.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER