

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Lloyd H. Bailer
and Maruelvne Bailer

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Unincorporated
Business Tax under Article 16A & 23 of the Tax Law :
for the Years 1953 - 1958 and 1960 - 1967.

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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Lloyd H. Bailer, and Maruelvne Bailer the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

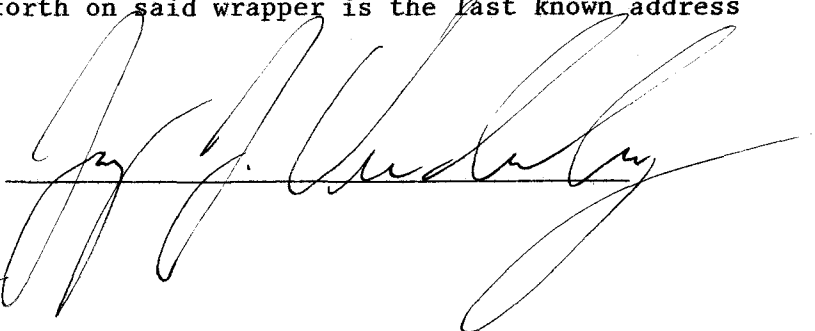
Lloyd H. Bailer
and Maruelvne Bailer
645 Walther Way
Los Angeles, CA 90049

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
23rd day of April, 1982.


Commissioner A. Blagden



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lloyd H. Bailer :
and Maruelvne Bailer :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Unincorporated :
Business Tax under Article 16A & 23 of the Tax :
Law for the Years 1953 - 1958 and 1960 - 1967.

State of New York
County of Albany

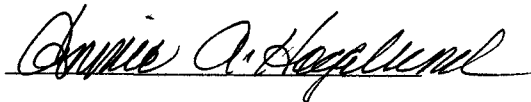
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Bonnie Bailer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

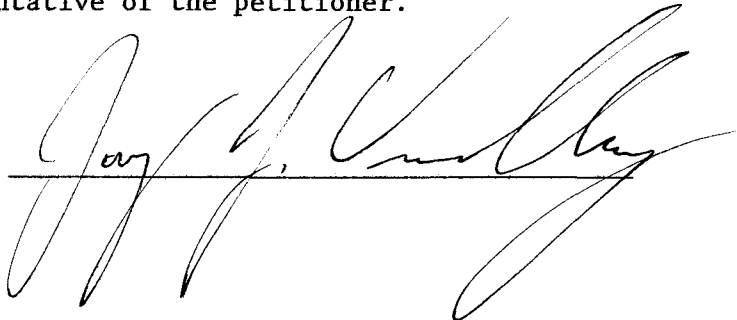
Bonnie Bailer
800 Riverside Dr., Apt. 6
New York, NY 10032

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
23rd day of April, 1982.





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

April 30, 1982

Lloyd H. Bailer
and Maruelvne Bailer
645 Walther Way
Los Angeles, CA 90049

Dear Mr. & Mrs. Bailer:

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) 386j 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 90 days from the date of this notice.

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Bonnie Bailer
800 Riverside Dr., Apt. 6
New York, NY 10032
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LLOYD H. BAILER AND MARVELYNE BAILER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Articles 16-A and 23 of the Tax Law for the	:	
Years 1953 through 1958 and 1960 through 1967	:	

Petitioners, Lloyd H. Bailer and Marvelyne Bailer, 645 Walther Way, Los Angeles, California 90049, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Articles 16-A and 23 of the Tax Law for the years 1953 through 1958 and 1960 through 1967 (File No. 29758).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1981 at 10:45 A.M. Petitioners appeared by Bonnie Bailer, petitioners' daughter. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner Lloyd H. Bailer's claims for refund of unincorporated business tax paid for the years 1953 through 1958 and 1960 through 1967 were timely filed.

II. Whether petitioner Lloyd H. Bailer's income derived from his activities as a "labor arbitrator" is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Lloyd H. Bailer (hereinafter petitioner) filed unincorporated business tax returns and paid the taxes computed thereon for each of the years 1953, through 1958 and 1960 through 1967.

2. On August 13, 1979 petitioner filed a claim for refund of unincorporated business tax, form IT113X, for each of said years on the basis that the income derived from his activities as a labor arbitrator during such years is exempt from the imposition of unincorporated business tax. Further, he claimed that since the taxes at issue "were erroneously collected" such claims should be considered timely pursuant to the provisions of section 697(d) of the Tax Law. Total refund claimed by petitioner is \$3,289.56.

3. Pursuant to copies of his personal and unincorporated business tax returns for the year 1961, which were furnished by petitioner during the hearing, his claim filed for said year was erroneous since the refund claimed of \$114.43 was the amount paid for personal income tax rather than unincorporated business tax, the latter being reported as \$24.68.

4. Subsequent to the filing of petitioner's claims for refund, the Audit Division issued a formal notice of disallowance wherein petitioner was notified that said claims were disallowed in full.

5. During the years at issue petitioner was engaged in activities as a labor arbitrator. As such, he was retained by employers and labor unions to make decisions on issues arising between them under collective bargaining agreements.

6. Petitioner, who held a doctorate degree in economics, operated his business from an office maintained at 50 Broad Street, New York City.

7. Petitioner claims professional exemption from the imposition of the unincorporated business tax pursuant to section 703(c) of the Tax Law and rests entirely on prior audit results of two individuals he is acquainted with whereby each was found exempt from such tax by virtue of their activities engaged in as labor arbitrators.

8. Although petitioner acknowledges that his claims were untimely filed pursuant to section 687(a) of the Tax Law, he argued that he is entitled to such refunds within the meaning and intent of section 697(d) of the Tax Law since the taxes were erroneously collected and there are no questions of fact or law involved.

CONCLUSIONS OF LAW

A. That section 374 of Article 16 as incorporated into section 386-j of Article 16-A of the Tax Law provides in pertinent part that:

"If an application for revision or refund, in a form prescribed by the tax commission, be filed with it by a taxpayer within two years from the time of the filing of the return or the payment of tax, whichever is earlier...then within one year from the time of such recomputation...the tax commission may grant or deny such application in whole or in part and may allow a credit or refund in the manner prescribed."

B. That section 687(a) of Article 22, as incorporated into section 722 of Article 23 of the Tax Law provides in pertinent part that:

"Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later."

C. That section 697(d) of Article 22, as incorporated into section 722 of Article 23 of the Tax Law and section 373-3 of Article 16, as incorporated into section 386-j of Article 16-A of the Tax Law provides that:

"Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person,

or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefore in writing to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefore its certificate to the comptroller."

D. That since there are questions of fact and law involved with respect to whether petitioner is entitled to an exemption from unincorporated business tax pursuant to section 703(c) of Article 23 and section 386 of Article 16-A of the Tax Law, sections 697(d) of Article 22 and section 373-3 of Article 16 are inapplicable. Accordingly, petitioners' claims for refund were untimely filed within the meaning and intent of section 687(a) of Article 22 and section 374 of Article 16 of the Tax Law.

E. That the issue of whether the income derived from petitioner's activities as a labor arbitrator is subject to unincorporated business tax during all years at issue herein is moot by virtue of Conclusion of Law "D", supra.

F. That the petition of Lloyd H. Bailer and Marvelyne Bailer is denied and the notice of disallowance issued by the Audit Division is hereby sustained.

DATED: Albany, New York

APR 30 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER