

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Doctor's Hospital

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 1968 - 1970.

AFFIDAVIT OF MAILING

State of New York
County of Albany

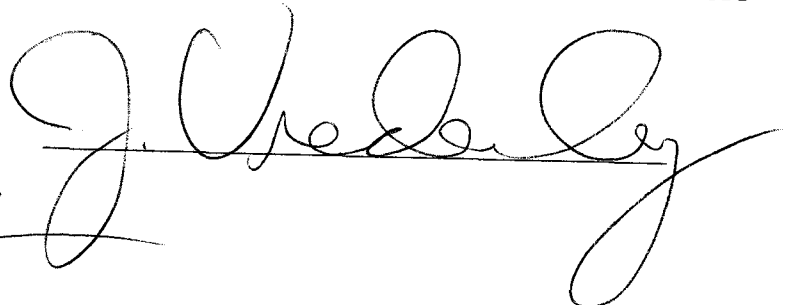
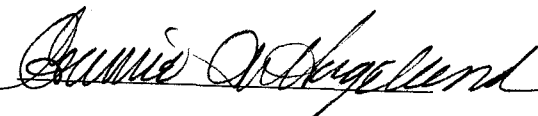
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Doctor's Hospital, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Doctor's Hospital
320 W. Merrick Rd.
Freeport, NY 11520

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Doctor's Hospital :

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 1968 - 1970. :

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Benjamin Brafman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Benjamin Brafman
18 E. 74th St.
New York, NY 10021

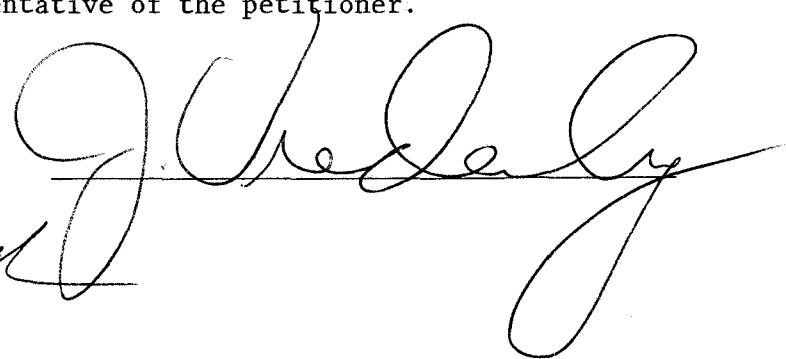
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 3, 1982

Doctor's Hospital
320 W. Merrick Rd.
Freeport, NY 11520

Gentlemen:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Benjamin Brafman
18 E. 74th St.
New York, NY 10021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
DOCTOR'S HOSPITAL
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1968,
1969 and 1970.

DECISION

Petitioner, Doctor's Hospital, 320 West Merrick Road, Freeport, New York 11520, 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 1968, 1969 and 1970 (File No. 24824).

A formal hearing was held before Robert Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1981 at 9:15 A.M. Petitioner appeared by Benjamin Brafman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner timely filed a claim for refund carrying back a net operating loss from the year 1971 to the year 1968.

FINDINGS OF FACT

1. Petitioner, Doctor's Hospital, a partnership, timely filed New York State Partnership Returns for the years 1969, 1970 and 1971. The 1969 partnership return reported taxable business income of \$475,831.83 and computed an unincorporated business tax liability of \$26,170.74. Taxable business income shown on the 1970 return totaled \$301,334.00 and the unincorporated business

tax due thereon amounted to \$16,573.37. The 1971 return reported a net loss of \$116,425.00 and, accordingly, no unincorporated business tax was paid.

2. Petitioner's U.S. partnership returns for the years 1969, 1970 and 1971 were audited by the Internal Revenue Service and substantial increases to partnership ordinary income were proposed. Petitioner disagreed with the proposed increases and therefore filed a protest with the District Director of the Internal Revenue Service. As the result of said protest, an agreement was reached between petitioner and the Internal Revenue Service whereby partnership ordinary income was increased by \$140,523.00 for 1969 and \$119,478.00 for 1970. For the year 1971, the partnership net loss was increased by \$235,862.00. The aforementioned agreement between petitioner and the Internal Revenue Service was made on April 18, 1975 and said agreement represented the final Federal determination.

3. Based on the April 18, 1975 agreement, the Internal Revenue Service recomputed the 1969, 1970 and 1971 individual income tax returns of the seven partners of Doctor's Hospital, passing through to each partner his respective distributive share of the adjustments to partnership income and loss. For Federal purposes, each of the seven partners had deficiencies in tax for 1969 and 1970 and an overpayment for 1971. The overpayment due each partner for 1971 was used to offset or reduce his tax due for 1969 and 1970.

4. Petitioner herein, Doctor's Hospital, did not report to the Audit Division within 90 days, as required by sections 722 and 659 of the Tax Law, the changes made by the Internal Revenue Service to its income or loss for the years 1969, 1970 and 1971.

5. On November 28, 1978, the Audit Division issued a Notice of Deficiency to petitioner for the years 1969 and 1970, asserting that additional unincorporated

business tax of \$14,300.05 was due, together with interest of \$7,004.18, for a total due of \$21,304.23. Said Notice of Deficiency was based on an explanatory Statement of Audit Changes dated May 24, 1978, wherein the Audit Division held that the additional partnership income per the Federal audit (\$140,523.00 for 1969 and \$119,478.00 for 1970) was subject to unincorporated business tax.

6. Doctor's Hospital timely filed a petition for redetermination of the Notice of Deficiency dated November 28, 1978. The petition encompassed the years 1968, 1969, 1970 and 1971. Petitioner does not contest the validity or computation of the additional tax due for 1969 and 1970, but argues that the tax due for said years should be reduced by a \$12,972.00 refund due it for 1968. Petitioner asserts that it is due a refund based on the carryback to 1968 of the additional \$235,862.00 loss allowed for the year 1971 per the final Federal determination dated April 18, 1975. The petition is considered proper for the year 1968 pursuant to section 689(c)(3)(A) of the Tax Law. The tax year 1971 is involved only because it is the loss year which generates the carryback to 1968.

7. Via a letter dated November 19, 1978, the Audit Division advised petitioner that:

"An IT-113X Claim for Refund should have been filed requesting a refund for 1968. However, the statute of limitations has expired relative to filing such claim. Therefore, no overpayment can be refunded for 1968."

8. Petitioner asserts that a claim for refund was filed on March 5, 1977 through its accounting firm. Submitted into evidence was a pencil copy of a claim for refund for 1968 which was unsigned and undated. In the lower right hand corner of the pencil copy, there is the pencil notation "mailed 3/5/77". The managing partner of the accounting firm which prepared the alleged claim for refund testified that, although he did not personally prepare or mail the

claim for refund, it was an office practice to note in pencil on the office copy of all documents the date said documents were mailed. Other than the managing partner's testimony, no additional documentary or testimonial evidence was submitted to support the filing of a claim for refund on March 5, 1977.

9. The Audit Division did not receive the claim for refund which petitioner asserts was filed on March 5, 1977. The final Federal determination for 1969, 1970 and 1971 dated April 18, 1975 was initially submitted by petitioner to the Audit Division on September 19, 1977. The first correspondence received by the Audit Division where a claim for refund was mentioned was contained in a letter dated November 30, 1978 from petitioner's accounting firm where it was stated that, "We have been waiting for a bill for the net tax due, offsetting deficiencies for 1969 and 1970 by the 1971 credit carried back."

CONCLUSIONS OF LAW

A. That sections 722 and 659 of the Tax Law provide that if a taxpayer's Federal taxable income is changed by the Internal Revenue Service the taxpayer shall report such change to the State Tax Commission within ninety (90) days after the final determination of such change.

B. That sections 722 and 687(c) of the Tax Law provide, in pertinent part, that where an Internal Revenue Service change in Federal taxable income results in an overpayment of Federal income taxes that:

"claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the tax commission."

C. That pursuant to sections 722, 659 and 687(c) of the Tax Law the petitioner herein has two years and ninety days from the date of the final Federal determination within which to file a claim for refund. That petitioner's

claim for refund for 1968 based on Federal changes to 1971 taxable income was required to be filed on or before July 18, 1977.

D. That sections 722 and 689(e) of the Tax Law place the burden of proof on petitioner. That petitioner has failed to meet its burden of proof to show that a claim for refund was filed on March 5, 1977. That petitioner has not shown that a claim for refund for the year 1968 was filed on or before July 18, 1977 and, therefore, no refund can be allowed for said year.

E. That the petition of Doctor's Hospital for redetermination or for refund is denied and the Notice of Deficiency dated November 28, 1978 is sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER