

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard & Carol Bierman :
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 1966 - 1973. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Ad-Ex Translations International :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1973. :

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Bernard & Carol Bierman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard & Carol Bierman
300 Grand Street
Croton on Hudson, NY 10520

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
6th day of May, 1983.

David Parchuck

Annice R. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Bernard & Carol Bierman
300 Grand Street
Croton on Hudson, NY 10520

Dear Mr. & Mrs. Bierman:

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
Peter VanNuys
VanNuys, Turley & Nelson
Lincoln Bldg., 305 Madison Ave., Suite 1748
New York, NY 10165
Taxing Bureau's Representative

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

May 6, 1983

Ad-Ex Translations International
Suite 3004, 630 Fifth Ave
New York, NY 10111

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.

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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Peter VanNuys
VanNuys, Turley & Nelson
Lincoln Bldg., 305 Madison Ave., Suite 1748
New York, NY 10165
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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard and Carol Bierman :
for redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Years 1966 through 1973. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Ad-Ex Translations International :
for Redetermination of a Deficiency or a Revision :
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Business Tax under Article 23 of the Tax Law :
for the Year 1973. :

State of New York
County of Albany

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Ad-Ex Translations International
Suite 3004, 630 Fifth Ave
New York, NY 10111

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
6th day of May, 1983.

David Parchuck

Annice A. Hagelund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BERNARD and CAROL BIERMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1966	:	
through 1973.	:	

In the Matter of the Petition	:	
of	:	
AD-EX TRANSLATIONS INTERNATIONAL	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1973.	:	

Petitioners, Bernard and Carol Bierman, 300 Grand Street, Croton-on-Hudson, New York 10520 and Ad-Ex Translations International, Suite 3004, 630 Fifth Avenue, New York, New York 10111, filed petitions for redetermination of deficiencies or refunds of unincorporated business tax under Article 23 of the Tax Law for the years 1966 through 1973 (File Nos. 31102 and 32119).

On February 10, 1982, petitioners, Bernard and Carol Bierman and Ad-Ex Translations International, advised the State Tax Commission in writing that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based upon the entire record contained in the file and a memorandum of law submitted with the February 10, 1982 letter. After due consideration of said record the State Tax Commission renders the following decision.

ISSUES

I. Whether the claims for refund or credit of petitioners, Bernard and Carol Bierman and Ad-Ex Translations International, are barred by the statute of limitations.

II. Whether petitioners' claims for refund are allowable under Tax Law §697(d).

FINDINGS OF FACT

1. Petitioners, Bernard and Carol Bierman, timely filed their New York State income tax returns for the years 1966 through 1973. In 1969, petitioners received from the New York State Income Tax Bureau a Notice and Demand for Payment of Income Tax Due dated September 12, 1969 claiming \$127.40 was due for unincorporated business tax for 1966 and \$142.54 for 1967 on Mr. Bierman's business activities as a language translator, plus \$67.49 in interest and \$24.42 in penalties thereon, for a total of \$361.85. Subsequently, on December 15, 1969, petitioner Bernard Bierman received from the New York State Income Tax Bureau a Notice and Demand for Payment of Income Tax Due plus a Statement of Audit Changes, which together claimed that the taxpayer owed \$135.16 in unincorporated business tax for the year 1968, plus \$33.79 in penalties and \$3.89 in interest, for a total of \$172.84. Petitioner Bernard Bierman paid the taxes, penalties and interest demanded.

Thereafter, petitioner Bernard Bierman, paid unincorporated business tax for the years 1969 through 1973 in connection with petitioner's sole proprietorship, a language translation bureau.

Petitioner Ad-Ex Translations International, a partnership in which Bernard Bierman was a partner, timely filed an unincorporated business tax

return for the calendar year 1973 and paid the unincorporated business tax shown as due thereon.

2. On June 8, 1977, petitioners filed claims for credit or refund of the unincorporated business taxes, plus penalties and interest described in Finding of Fact "1" upon learning of the decision, Matter of Arthur Tannenbaum v. State Tax Commission, 46 AD2d 400.

3. On October 30, 1978, the Income Tax Bureau denied the claims for credit or refund of unincorporated business tax for the years 1966 through 1973 paid by petitioner Bernard Bierman, on the grounds that they had not been timely filed and that the three year statute of limitations had expired. The claim for refund filed by Ad-Ex Translations International was denied on August 28, 1978, also on the grounds that the three years statute of limitations had expired. Petitioners argue that if the Department of Taxation and Finance had notified professional translators of the decision in Tannenbaum, supra, their claims for refund would have been timely.

The total amount of refund sought by Bernard and Carol Bierman¹ for the years 1966 through 1973 is \$1,205.44, plus interest thereon, and the amount of refund sought by Ad-Ex Translations International for the year 1973 is \$325.53, plus interest thereon.

4. Petitioner Bernard Bierman, in a letter dated June 6, 1978 to the Income Tax Bureau of the New York State Department of Taxation and Finance, protested the informal rejection of his 1973 claim for refund on behalf of Ad-Ex Translations International. He wrote that "I in no way accept your

¹ Although unincorporated business tax returns were filed only in Bernard Bierman's name for 1966 through 1973, refund claims for 1969 through 1973 were filed by Bernard and Carol Bierman.

ridiculous ruling regarding the deadline for filing for refunds... (T)he State did issue refunds to several translators, whose accountants were smart enough to apply."

5. Petitioners argue that even if it is held that the statute of limitations bars their claims for refund or credit, the New York State unincorporated business taxes plus penalties and interest paid thereon for the years 1966 through 1973, based upon petitioners' business activities as language translators, should be refunded under Tax Law §697(d).

CONCLUSIONS OF LAW

A. That petitioners' claims for refund of unincorporated business tax for the years 1966 through 1973 were not filed within the period of limitation set forth in Tax Law §687, and therefore were not timely filed. We note further that there is no requirement in the law or regulations which imposes a duty upon the Department of Taxation and Finance to notify taxpayers of court decisions that may affect their liability for payment of taxes or their entitlement to a possible refund of taxes.

B. That Tax Law §697(d) provides as follows:

"Special refund authority. -- 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 therefor 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."

That Tax Law §722 incorporates the provisions of Tax Law §697(d) into Article 23.

C. That the Tax Commission's special refund authority under Tax Law §§697(d) and 722 is inapplicable herein since factual questions are involved

before petitioners may be found entitled to an exemption from unincorporated business taxes under Tax Law §703(c). For example, petitioner Bernard Bierman must show that he has substantial education in the field of languages and translation; that he belongs to professional groups in his field; that, in effect, he is in a similar circumstance as the petitioner in Tannenbaum (see Finding of Fact "2", supra).


D. That the petitions of Ad-Ex Translations International and Bernard and Carol Bierman are denied; and the denials of their claims for credit or refund by the Income Tax Bureau on August 28, 1978 and October 30, 1978, respectively, are sustained.


DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER