

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of  
Irving & Mildred Hershey :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Unincorporated  
Business Tax under Article(s) 23 of the Tax Law :  
for the Year 1975.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of November, 1986, he/she served the within notice of Decision by certified mail upon Irving & Mildred Hershey the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving & Mildred Hershey  
955-D Circle Drive  
Delray Beach, FL 33445

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
12th day of November, 1986.

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

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

November 12, 1986

Irving & Mildred Hershey  
955-D Circle Drive  
Delray Beach, FL 33445

Dear Mr. & Mrs. Hershey:

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) 690 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
IRVING AND MILDRED HERSHEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1975.	:	

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Petitioners, Irving and Mildred Hershey, 955-D Circle Drive, Delray Beach, Florida 33445, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1975 (File No. 51762).

On June 20, 1986, petitioners waived a hearing and agreed to submit this matter to the State Tax Commission for decision based upon the Department of Taxation and Finance file, with a brief to be filed by July 20, 1986. After due consideration the State Tax Commission hereby renders the following decision.

ISSUE

Whether petitioners made a timely request for refund of unincorporated business taxes paid for the year 1975.

FINDINGS OF FACT

1. On February 23, 1979, petitioner Irving Hershey was issued a Notice of Deficiency with respect to unincorporated business tax for the year 1974 in the amount of \$101.34 in tax plus penalty and interest of \$91.60. The Audit Division explained in a Statement of Audit Changes that said petitioner's income from activities as a "consultant" was subject to unincorporated business tax. This notice was timely protested by petitioner.

2. On August 7, 1980 a Notice of Deficiency was issued to petitioners, Irving and Mildred Hershey, for unincorporated business tax for 1975 in the amount of \$213.97 which included \$129.39 in tax, plus penalty and interest.

3. On September 9, 1980 petitioners paid the deficiency of \$213.97.

4. In a letter dated October 31, 1981, received by the Tax Appeals Bureau on November 2, 1981, petitioners requested assistance with respect to: a) resolving the 1974 deficiency; and b) obtaining a refund of the amount paid on the 1975 deficiency.

5. On March 11, 1983 the Audit Division cancelled the 1974 deficiency on the basis that Mr. Hershey was not conducting an unincorporated business, but was a professional in the field of social services.

6. On October 21, 1983 petitioners wrote to the Department of Taxation and Finance requesting a refund of the tax paid in 1975.

7. On October 28, 1983 the Audit Division responded, stating, in essence, that no claim for refund had been filed, and the letter of October 21, 1983 was not timely and thus could not be accepted as a claim for refund.

8. After further correspondence, a formal Notice of Disallowance was sent to petitioners on February 27, 1984.

9. The Audit Division concedes that the amount of \$213.97 was paid by petitioners on September 9, 1980 and that Mr. Hershey's receipts from his activities in 1975 were not subject to unincorporated business tax. The only issue remaining is the timeliness of the refund claim.

#### CONCLUSIONS OF LAW

A. That section 687(a) of the Tax Law (applicable to Article 23 by virtue of section 722) provides, in pertinent part, as follows:

"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, or if no return was filed, within two years from the time the tax was paid."


B. That the letter received by the Tax Appeals Bureau on November 2, 1981 (Finding of Fact "4") was received within two years of the time the payment was made, i.e. September 9, 1980, and thus constituted a timely claim for credit or refund under section 687(a) of the Tax Law.

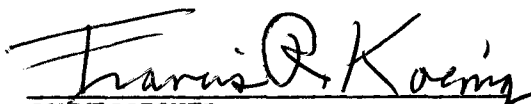
C. That the petition of Irving and Mildred Hershey is granted and the Audit Division is hereby directed to authorize a refund to petitioners in the amount of \$213.97 plus interest from September 9, 1980.

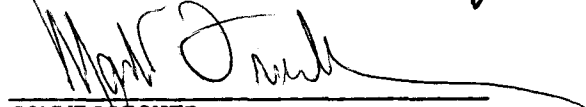
DATED: Albany, New York

STATE TAX COMMISSION

NOV 12 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER