

STATE OF NEW YORK
STATE TAX COMMISSION

Haims
P.I.
1970

In the Matter of the Petition

of
Morris Haims

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1957

State of New York
County of Albany

Lynn Puerto, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of January, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Finkel and Nadler, Esqs. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Finkel and Nadler, Esqs. 401 Broadway,

New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

29th day of January, 1970

Edward P. Cook

Lynn Puerto

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS HAIMS

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1957

AFFIDAVIT OF MAILING
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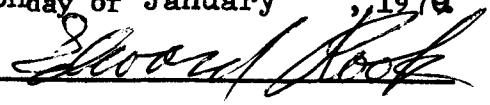
State of New York
County of Albany


Lynn Puerto, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of January, 1970, she served the within Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Morris Haims (~~Representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Morris Haims, 545 ~~XXXXX~~ Montgomery Street Brooklyn, New York 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~ or) 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

29th day of January, 1970





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MORRIS HAIMS	:	DETERMINATION
For a Revision or for Refund of	:	
Personal Income Tax under	:	
Article 16 of the Tax Law for	:	
the Year 1957	:	

The taxpayer having filed an application pursuant to Tax Law Section 374 for revision or refund of Personal Income tax imposed by Article 16 of the Tax Law for the year 1957 under an assessment dated October 23, 1961 and such application having been denied and a hearing thereon having been duly demanded and held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered the STATE TAX COMMISSION hereby

FINDS:

(1) The sole issue in case is the timeliness and validity of an assessment issued after a previous assessment for the same year had been satisfied by a check having a restrictive endorsement.

(2) There is no evidence that the taxpayer's 1957 return was filed on or before the due date thereof, April 15, 1958.

(3) The taxpayer's 1957 return, or a copy thereof, was filed on March 24, 1960 and showed a tax due of \$452.14 composed of normal tax of \$153.00 and capital gains tax of \$299.14. The return indicates that a partial payment of \$113.14 was also made therewith. This alleged payment however was never received by the Department.

(4) Assessments were made on May 3, 1960 for the years 1951 through 1957 in the total amount of \$427.30. The assessment for 1957 (No.B776441) was for \$153.00.

(5) On September 14, 1961 a warrant was issued against taxpayer for \$597.80 covering the tax years 1951 through 1957. The excess over \$427.30 constituted penalty and interest. On October 2, 1961 the amount of \$427.30 was paid and the warrant was cancelled. The check given in payment was endorsed with the warrant number and immediately below with the statement "In full payment of above". This endorsement did not refer to any amount not included in the amount of the warrant. While this payment implies a waiver of interest and penalties no such implication can be drawn concerning a compromise of taxes .

(6) A further assessment (No. B984949), the one in issue here, was made on October 23, 1961 in the amount of \$452.14 plus penalty and interest. This was reduced by letter dated February 7, 1962 to \$299.14 without penalty or interest and as reduced represented the capital gain tax shown to be due on the 1957 return which had not yet been assessed.

Upon the foregoing findings and all the evidence herein
The State Tax Commission
DETERMINES

(A) The assessment here in issue was made within 2 years from the filing of the return and is therefore timely (Tax Law Section 374).

(B) The sole authority to compromise taxes is found in Tax Law Sections 171(15), 171(16) and 171(18) and any asserted compromise not valid under those provisions is absolutely void and of no effect.

(C) The restrictive endorsement on the check in payment of the warrant would apply, if at all, to the amounts included in the assessment on which the warrant was based and such assessment did not include any amount which was also included in the subsequent assessment, here in issue.

(D) The taxpayer has failed to carry the burden of proof to show that there was an accord and satisfaction or otherwise final and binding agreement with respect to his 1957 taxes.

(See Earle C. Parks 33 Tax Court 298; D.D. Patterson 1966 Tax Court Memo No. 219)

(E) The notice of additional assessment dated October 23, 1961 does not include taxes or other charges which could not have been lawfully demanded and it is hereby affirmed together with such interest and other charges, if any, as may be lawfully due pursuant to Tax Law Sections 376 and 377.

Dated: January 23, 1970, Albany, New York

STATE TAX COMMISSION

Norman Gallivan
PRESIDENT

Bruce Mouley
COMMISSIONER

Milton Krinner
COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MORRIS HAIMS	:	DETERMINATION
For a Revision or for Refund of	:	
Personal Income Tax under	:	
Article 16 of the Tax Law for	:	
the Year 1957	:	

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Dated: January 23, 1970, Albany, New York

STATE TAX COMMISSION

Lawson Gallivan
PRESIDENT

Bruce Mauley
COMMISSIONER

Melvin Koerner
COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12226

25-11

Mr. Morris Haims
545 Montgomery Street
Brooklyn, New York

PM
RECEIVED
BY BRIDGE
1970

150TH ANNIVERSARY
ON-CAMPUS TRAINING

10 SEP 1970

UNDELIVERED
NO NOT FORWARDED IN THIS
ENVELOPE OR ENVELOPE

MOVED, left no address
☐ No such number
☒ Moved, not forwardable
☒ Addressee unknown

120-31370

REVIEW UNIT
BANK OFFICE