

STATE OF NEW YORK
STATE TAX COMMISSION

Schenfeld
P.I. & UBT -1970

In the Matter of the Petition

of

Max Schenfeld

For a Redetermination of a Deficiency or
a Refund of Personal Income & UBT :
Taxes under Article(s) 16 & 16A of the
Tax Law for the (Year(s)) 1944 & 1945 :

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

State of New York
County of Albany

Janet Wright , 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 11th day of March , 1970 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Liber &
Colligan, Esqs. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Liber & Colligan, Esqs.
88-14 Sutphin Boulevard
Jamaica, 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

11th day of March , 19 70

Maria Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

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proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Max Schenfeld
2420 Ocean Pky
Brooklyn, New York

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Sworn to before me this

11 day of March, 1970

Maria Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF
MAX SCHENFELD

For Revision or Refund of Personal Income
Taxes Under Article 16 and Unincorporated
Business Taxes Under Article 16-A of the
Tax Law for the Years 1944 and 1945

Max Schenfeld, the taxpayer, having filed an applica-
tion for revision or refund of personal income taxes and of
unincorporated business taxes for the years 1944 and 1945,
and such application having been denied, and a hearing having
been held at the offices of the State Department of Taxation
and Finance, 80 Centre Street, New York, New York before
Francis X. Boylan, Hearing Officer, on May 3, 1965 and the
taxpayer, Max Schenfeld, having appeared by Liber & Colligan,
of Jamaica, New York, by Thomas J. Liber, Esq., of counsel,
and the taxpayer having been present in person, and the record
having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notices of additional assessments AA SIB 9628
and AA SIB 9629, both dated December 16, 1959, the State Tax
Commission made assessments of additional taxes against taxpayer
for the years 1944 and 1945, respectively, by reason of further
unreported income and certain disallowed deductions. For the
year 1944, it assessed additional normal tax in the amount of
\$2,304.88, and additional unincorporated business tax in the
amount of \$1,442.03, to a total of additional taxes, and

penalties and interest of \$20,533.07; for the year 1945, the Commission assessed additional normal tax in the amount of \$1,313.36 and additional unincorporated business tax in the amount of \$1,010.79, to a total of additional taxes, and penalties and interest of \$12,178.55 for that year.

The said totals as to both years were arrived at by doubling the aggregate tax due in each year, and adding thereto a further charge at the rate of 1% per month down to October 15, 1959, pursuant to the authority of Tax Law section 377.3 providing for such penalties in cases of willfully false returns made with intent to evade the tax.

(2) At the time of the additional assessments in 1959 the taxpayer's state income tax returns for 1944 and 1945 had been destroyed in accordance with the Department's practice.

The additional assessments in 1959 were based on a written report made by an investigator of this Department supplemented by and based on a report by the federal Treasury Department by letter addressed to the taxpayer dated July 9, 1951, summarizing an audit of the taxpayer's federal returns for the years under consideration.

In the years under consideration, 1944 and 1945, the taxpayer made returns of normal and unincorporated business tax as a jobber of dress trimmings. In 1944, his normal income reported for purposes of state taxes, as constructed from his federal returns was \$13,694.38 for normal income tax purposes, and \$20,764.28 for unincorporated business tax purposes. In 1945, the taxpayer's New York normal income, as constructed,

was \$5,448.37 and his income subject to unincorporated business tax, the amount of \$8,172.56.

In 1944 he was assessed on additional income of \$43,402.68 for normal tax purposes, and on \$31,832.78 for unincorporated business tax. This total additional income for 1944 reflected the disallowing of certain items of expense disallowed on the federal returns and the adding of the amount of \$39,474.78 in unreported sales.

The total additional income in 1945 for normal tax purposes was fixed in the amount of \$39,832.54, and for unincorporated business tax purposes, in the amount of \$32,058.35. These figures for 1945 similarly were arrived at by disallowing certain items of expense that were disallowed on federal audit and by adding the amount of \$39,798.35 in additional unreported sales.

These modifications after certain statutory allowances for state tax purposes resulted in the total additional income stated for each of the two years.

(3) The Department's investigator's report at the time of such additional assessments in 1959 indicated that there was a federal indictment arising out of taxpayer's returns for the years under consideration, as a result of which taxpayer was convicted and paid two fines totaling \$3,000.

In fact, and according to a recent report of an inspection of the criminal court docket of the U.S. District Court, at New York, New York under docket No. 135-27, judgment No. 53358, was entered April 2, 1951, against the taxpayer,

Max Schenfeld, who was indicted on two counts for attempting to evade federal income taxes for the years 1944 and 1945. After pleading not guilty on March 14, 1951, the defendant taxpayer pleaded guilty on April 2, 1951 and on April 23, 1951, he was sentenced to pay a fine of \$1,500 on each of the counts to a total of \$3,000. On April 30, 1951, the defendant paid the sum of \$3,000.

(4) The taxpayer in the present proceeding filed applications for revision or refund as to the additional assessments for both 1944 and 1945, stating therein only that he raised questions of law and fact. The objections actually made in taxpayer's behalf were that there was no adequate basis for assessments premised on fraud, and that the assessments were therefore untimely made; and that the additional assessments were excessive in any case in that no allowance was made for the cost of goods sold, as an expense to be offset against the proceeds of the asserted unreported sales.

(5) At the time of the additional assessments made by reason of a finding that the returns under consideration were false and fraudulent, the State Tax Commission, it is found, was informed by its investigator's report that the taxpayer had been convicted of attempted federal income tax evasion for the years under consideration; and the information so reported was in fact true.

(6) The taxpayer did not testify at the hearing herein pursuant to which this determination is made, and, it is found, there was no testimony by any witness in his behalf, or any

evidence, that the amounts of net income computed and reported by taxpayer for state tax purposes in 1944 and 1945 did not in fact reflect all the costs of all sales made, including those sales on which he did not report the income or pay taxes.

Upon the foregoing facts and findings and all the evidence herein, the State Tax Commission hereby

DETERMINES:

(A) That the additional assessments under consideration, which were based on a finding of wilfully false returns with intent to evade the tax in the years under consideration, were adequately supported by the information the Department had at the time of such findings and assessments, and said assessments were not arbitrary or unreasonable.

(B) That, in the absence of evidence that the costs already taken by taxpayer, and reflected in the taxpayer's returns for the years in question, were not the full costs, including costs related to sales which the taxpayer did not include in income or pay taxes on, the Department's not making any special allowance, itself, (in computing the additional assessments) for estimated costs of goods sold in such unreported sales, as an offset to income from such sales, was not unreasonable or unlawful.

(C) That the additional assessments, both dated December 16, 1959, for the years 1944 and 1945, respectively, assessing tax penalty and interest to a total of \$20,533.07 for 1944, and \$12,178.55 for 1945, as of October 15, 1959, were lawful and correct, pursuant to provisions of Tax Law

section 373 providing for assessment at any time in the case of a wilfully false or fraudulent return with intent to evade the tax, and pursuant to Tax Law section 377.3 providing for doubling the tax due and increasing it at the rate of 1% monthly while unpaid in such cases of false or fraudulent returns. The said assessments are therefore affirmed.

And it is So Ordered

DATED: Albany, New York this 9th day of March, 1970.

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12226



REASON FOR RETURN
Unpaid
Unpaid

Liber & Colligan, Esqs.
88-14 Sutphin Boulevard
Jamaica, New York

[Handwritten signature]

STATE TAX COMMISSION

Mr. Rook

MAX SCHEMFELD, Art. 16 and 16A Determination

Pending

The attached determination was prepared by Mr. F. X. Boylan in 1967 but was not processed until now. Mr. Boylan, in his present capacity as a Hearing Officer of this unit, has reviewed his proposed determination and has indicated his continued agreement.

The determination sustains a fraud penalty assessment as well as an assessment for the basic tax. This assessment is based upon a Federal audit and the taxpayer's conviction on a charge of Federal income tax evasion for the years 1944 and 1945.

I disagree with the determination which is necessarily based on fraud, the area in which we must sustain the burden of proof. The basic assessments are untimely if this burden is not sustained.

In accordance with my general policy of non-interference with the judgment of the hearing officers, Mr. Boylan's determination is submitted to you.

The basis of my disagreement is that the taxpayer's New York returns were not in evidence because they had been destroyed. We know only that the taxpayer did file the returns; the amount paid is unknown.

The Department's case is based entirely upon the inference that because the taxpayer fraudulently understated on his Federal return, he did so on his New York return. It is my contention that this is not a proper legal inference.

Secretary to the State Tax Commission

May 2, 1969

cc Mr. Boylan



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, N.Y.
March 11, 1970

Hearing Officer

Max Schenfeld
2420 Ocean Pky
Brooklyn, New York

RE: Personal Income Taxes and
Unincorporated Business Taxes

Dear Sir:

Please take notice of the determination of the
State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section 375 of the Tax Law any proceeding in court to
review an adverse determination must be commenced within
90 days after the date of this letter.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this determination
or concerning any other matter may be addressed to the
undersigned.

Very truly yours,

Hearing Officer

Francis X. Boylan

cc Petitioner's Representative
Law Bureau

AD-1.10 (2/70)

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

MAX SCHENFELD

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The State Tax Commission hereby finds that:

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DATED: Albany, New York this 9th day of March, 1970.

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PRESIDENT


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