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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRED J. and ANNA ATTEA

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

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year(s) 1967 and 1968.:

State of New York
County of Albany

JANET MACK, 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 4th day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon FRED J. and
ANNA ATTEA (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

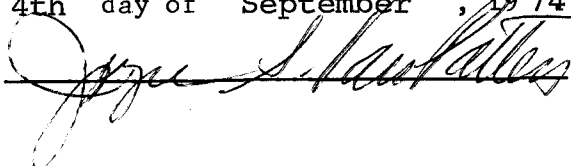
wrapper addressed as follows: Mr. and Mrs. Fred J. Attea
4755 Boncrest West
Williamsville, New York 14221

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

4th day of September, 1974



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FRED J. and ANNA ATTEA

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AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year(s) 1967 and 1968.:

State of New York
County of Albany

JANET MACK, 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 4th day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon **FRANCIS A. LICKER, P.A.**

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Francis A. Licker, P.A.
3165 Bailey Avenue
Buffalo, New York 14215

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

4th day of September, 1974.

[Signature]
[Signature]



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
September 4, 1974

Mr. and Mrs. Fred J. Attea
4755 Boncrest West
Williamsville, New York 14221

Dear Mr. and Mrs. Attea:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690 and 722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRED J. and ANNA ATTEA : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1967 and 1968. :

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on April 17, 1972, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by Francis A. Licker, Public Accountant, and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

Did the taxpayers substantiate claimed salary deductions from the unincorporated business and personal income tax returns for the years 1967 and 1968?

1. Petitioners, Fred J. and Anna Attea, timely filed New York State unincorporated business and personal income tax returns for the years 1967 and 1968.

2. A Notice of Determination of deficiencies in personal income and unincorporated business tax returns for the years 1967 and 1968 was issued on January 18, 1971, against the taxpayers under File No. 8-12202020.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. The Income Tax Bureau disallowed a claimed salary deduction from the unincorporated business and personal income tax returns of the taxpayer, Fred J. Attea, in the amount of \$5,000.00 for 1967 and \$5,200.00 for 1968.

5. The taxpayer, Fred J. Attea, was a commercial and industrial broker dealing with large corporations and investors for shopping and other substantial parcels of real property. He assembled parcels of land for shopping centers and other real estate clients requiring large tracts of land. The work was complex and required much skill, knowledge and contacts. On occasions, it involved such things as rezoning, street abandonments, and much work with surveys.

6. A great deal of the taxpayer's help was from his wife at home who helped him through answering and screening phone calls, clipping out real estate articles, entertaining clients' wives, and picking up real estate surveys. Taxpayer estimated this help at home to be between thirty and fifty hours done at various times around the clock.

7. The taxpayer also used the services of McLean's Business Agency in downtown Buffalo securing rental office space for a desk and file, phone answering service and a very limited amount of help with business mail and correspondence.

8. The taxpayer asserted that proof of payment to his wife of the claimed salary deduction was evidenced by the fact that his bank accounts were in joint name and in several instances his wife had been given interests in various parcels of property. However, in fact,

these things appeared to be no different than the sharing of financial matters which many married persons do without regard to work or business.

9. With respect to the alleged salary, there were no deductions, and no payments for social security, unemployment insurance, workmen's compensation, or disability benefits, or withheld State or Federal income taxes.

CONCLUSIONS OF LAW

A. There is no doubt that the work of Anna Attea was helpful to Fred J. Attea. However, in order to secure a deduction for employee salary, a certain amount of compliance with everyday business practice is required. The evidence of bona fide employment or the sharing of property by a married couple as opposed to a joint venture is not convincing. Additionally, the total failure to pay or deduct for social security, unemployment insurance, workmen's compensation, disability benefits, Federal and State withholding of income tax indicate that there was no employment. Nor is there any real indication or substantial evidence of the observance of the required conventions of a joint business.

At best, the questioned deductions on the tax returns, appear to be mere attempts at accounting arrangements on the tax returns alone, to reduce the taxpayer's graduated income tax and his unincorporated business tax and simultaneously ignore and avoid the payment of other taxes and social insurance payments and contributions which are routinely required of employers and employees.

B. The deficiency is fully sustained. The taxpayers' petition is denied. The taxpayers appear to have acted in good faith and no penalty should be applied.

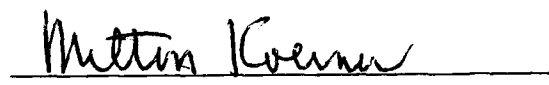
C. Pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
September 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER