

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER WAX & TERRY WAX

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) 22 of the
Tax Law for the Year(s) 1966 :

State of New York
County of Albany

Martha Funaro , 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 20th day of August , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Walter & Terry Wax

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Walter Wax
1453 Orchard Terrace
Hillside, New Jersey

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

20th day of August, 1974

Janet Mack

Jackie Suras

STATE OF NEW YORK
STATE TAX COMMISSION

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Tax Law for the Year(s) 1966 :

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County of Albany

Martha Funaro , 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 20th day of August , 1974 , she served the within Notice of Decision (or Determination) by (certified) mail upon Robert W. Taylor, Esq.

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

160 Broadway
New York, New York 10038

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

20th day of August , 1974.

For The Sun

Janet Mack



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

August 20, 1974

**Mr. & Mrs. Walter Wax
1853 Orchard Terrace
Hillside, New Jersey**

Dear Mr. & Mrs. Wax:

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

Please take further notice that pursuant to
Section(s) **690** 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,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE LEVINE & WALTER WAX

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1966

State of New York
County of Albany

Martha Funaro , 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 20th day of August , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Walter Wax

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Walter Wax
1453 Orchard Terrace
Hillside, New Jersey

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

20th day of August , 1974.

Janet Mac

Martha Funaro



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

August 20, 1974

Mr. Walter Max
1453 Orchard Terrace
Hillside, New Jersey

Dear Mr. Max:

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

Please take further notice that pursuant to
Section(s) **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,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LAWRENCE LEVINE & WALTER WAX

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OF NOTICE OF DECISION
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For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1966 :

State of New York
County of Albany

Martha Funaro, 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 20th day of August, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Lawrence Levine

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

5120 Glenwood Road
Brooklyn, New York 11234

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

20th day of August, 1974

Janet Mack

Martha Funaro



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
August 20, 1974

Mr. Lawrence Levine
5120 Glenwood Road
Brooklyn, New York 11234

Dear Mr. Levine:

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

Please take further notice that pursuant to
Section(s) **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
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These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

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age, and that on the 20th day of August , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert Levine, C.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: Robert Levine, C.P.A.

5120 Glenwood Road
Brooklyn, New York 11234

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
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known address of the (representative of the) petitioner.

Sworn to before me this

20th day of August , 1974

Janet Mac

Martha Funaro

STATE TAX COMMISSION

DECISION

Petitioners, Lawrence Levine and Walter Wax, have filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1966. (File No. 2667).

Petitioners, Walter Wax and Terry Wax, have filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1966. (File No. 53406154).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 11, 1973, at 9:15 A.M., and on November 15, 1973, at 3:00 P.M. At the September hearing,

both Lawrence Levine and Walter Wax appeared. At the November hearing, only Lawrence Levine appeared. At both hearings, the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Were Lawrence Levine and Walter Wax engaged in a partnership subject to the unincorporated business tax, during the year 1966?

II. Should Walter Wax and Terry Wax, nonresidents of New York, have included in their personal income tax for the year 1966, the receipt of partnership income from the partnership of Lawrence Levine and Walter Wax.

FINDINGS OF FACT

1. For the year 1966, a U.S. partnership return was filed under the name of Lawrence Levine and Walter Wax, 1464 East 85th Street, Brooklyn, New York, indicating a total income of \$22,459.77. The return was signed by Lawrence Levine, a New York State resident, but not by Walter Wax, a New Jersey resident. No New York State partnership return was filed by Lawrence Levine and Walter Wax for the year 1966. In addition, Walter Wax and his wife, Terry Wax, did not report in their income for the year 1966, receipt of any partnership income from the partnership of Lawrence Levine and Walter Wax.

2. On February 24, 1970, the Income Tax Bureau issued a Statement of Audit Changes against Lawrence Levine and Walter Wax, imposing unincorporated business tax for the year 1966, upon the grounds that Lawrence Levine and Walter Wax had been engaged in a partnership during said year, the income from which was subject

to the unincorporated business tax. In addition, it imposed a penalty for failure to file a New York State unincorporated business tax return for 1966. In accordance with the aforesaid Statement, it issued a Notice of Deficiency in the sum of \$2,629.44.

3. On February 24, 1970, the Income Tax Bureau also issued a Statement of Audit Changes against Walter Wax and Terry Wax, imposing additional personal income tax for the year 1966, upon the grounds that they were liable for tax upon the receipt of partnership income from the partnership of Lawrence Levine and Walter Wax. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,377.84.

4. During 1966, Lawrence Levine was president of the Delta National Corporation, a holding company. Walter Wax was employed by A. T. Brod and Company, a member of the New York Stock Exchange.

5. Lawrence Levine claimed that no New York State partnership return had been filed for the year 1966, because it was not required, that he and Walter Wax had been engaged, not in a partnership, but a joint venture mainly involved in the purchase and sale of a few securities, that no partnership certificate was ever filed with the county clerk. He further contended that there was no continuity, frequency or regularity of activities and that the transaction yielding the \$22,459.77, was basically a "one shot" deal - a stock transaction in which he and Walter Wax pooled their individual monies. Walter Wax agreed with Lawrence Levine as to the aforementioned claims.

6. The U.S. partnership return in the name of Lawrence Levine and Walter Wax indicated that the income derived thereupon was divided equally between the two partners. It also indicated the payment of rent and travel expenses. When questioned about this return, Lawrence Levine answered alternatively that it had been filed in error or that he may have signed a blank return, or that it had been filed strictly for the purposes of balancing off the transaction between himself and Walter Wax. The Internal Revenue Service audited the return and disallowed a portion of the claimed travel expenses. No explanation was given as to why Walter Wax had not signed the U.S. partnership return. Finally, Lawrence Levine, contended that he did not remember what had taken place during 1966 and that all he could recall was that he and Walter Wax may have had one or two transactions involving the purchase and sale of securities. Again, Walter Wax was in agreement with Mr. Levine's contentions.

CONCLUSIONS OF LAW

A. The testimony of Lawrence Levine and Walter Wax, was not believable.

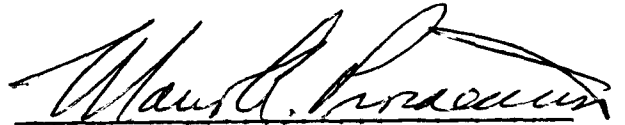
B. That during 1966, Lawrence Levine and Walter Wax were engaged in a partnership, the income from which was subject to the unincorporated business tax.

C. That Walter Wax and Terry Wax received income from a business conducted in New York and such income is taxable to them.

D. That the petition of Lawrence Levine and Walter Wax and the petition of Walter Wax and Terry Wax are denied, and the notices of deficiency, issued February 24, 1970, are sustained.

DATED: Albany, New York
August 20, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER