

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING ROSENTHAL

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 (30) 22 of the  
Tax Law for the ~~XXXXXX~~ Period  
January 1, 1966 to September 30, 1966.

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 18th day of December , 1975 , she served the within

Notice of Decision ~~XXXXXXXXXXXXXX~~ by (certified) mail upon IRVING ROSENTHAL

~~XXXXXXXXXXXXXX~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Irving Rosenthal  
62 Hampshire Road  
Great Neck, 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 ~~XXXXXXXXXX~~  
~~XX~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~XXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

18th day of December , 1975

Mary Troff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING ROSENTHAL

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State of New York  
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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 18th day of December , 19 75, she served the within  
Notice of Decision ~~XXXXXXXXXXXX~~ by (certified) mail upon ROBERT E.

GARFIELD, 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 E. Garfield, Esq.  
Chattman, Moss, Chattman, Garfield & Friedlander  
900 Engineers Building  
Cleveland, Ohio 44114

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

18th day of December , 19 75

Mary Groff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

~~XXXXXXXXXX~~  
(518)457-3830

DATED: Albany, New York  
December 18, 1975

Mr. Irving Rosenthal  
62 Hampshire Road  
Great Neck, New York

Dear Mr. Rosenthal:

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

Please take further notice that pursuant to  
Section ~~60~~ **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

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In the Matter of the Petition	:	
of	:	
IRVING ROSENTHAL	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Period January 1, 1966 to September 30,	:	
1966.	:	

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On December 29, 1969, the Income Tax Bureau issued statements of deficiency against petitioner, Irving Rosenthal, 62 Hampshire Road, Great Neck, New York, imposing a penalty equal to the amount of unpaid withholding taxes alleged to be due from Marchessa International Ltd. for the period January 1, 1966 through September 30, 1966, and from Laurie Rich Industries, Inc. for the period January 1, 1966 through June 30, 1966. In accordance with the Statement of Deficiency it issued a Notice of Deficiency against him.

Petitioner has filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the period January 1, 1966 to September 30, 1966. (File No. 13-1976244 for Marchessa, Ltd. and File No. 13-1677313 for Laurie Rich).

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1975, at 1:00 P.M., before Nigel G. Wright, Hearing Officer.

Robert E. Garfield, Esq. appeared for the petitioner. The Income Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

The issue is whether petitioner, Irving Rosenthal, is liable for unpaid New York State withholding taxes due from Marchessa International, Ltd. and Laurie Rich Knitwear Industries, Inc. for the year 1966.

FINDINGS OF FACT

1. Petitioner, Irving Rosenthal, has been on the staff of the City College of the City University of New York since January 1, 1933, as a full-time teacher, except for a period of military leave during World War II. He was a member of the English Department and directed courses in communications.

2. After his discharge from the Army following World War II petitioner joined his brother, Sam Rosenthal, as a part-time employee in the latter's business. In 1945, Sam Rosenthal founded Laurie Rich Knitwear Industries, Inc. to manufacture sportswear. Petitioner was named an officer of the corporation and held the position of secretary-treasurer. Over the course of the years, Sam Rosenthal expanded and started other corporations one of which was Marchessa, Ltd., an importer. At its inception petitioner was named an officer of this corporation also.

3. Petitioner had a desk at Sam Rosenthal's offices at 519 Eighth Avenue, New York, New York. He had joined the latter

for the purpose of aiding his brother in personal correspondence.

Sam Rosenthal had little education and relied on his brother to write personal letters for him. The corporations employed six secretaries to handle the business correspondence. Petitioner also performed other duties commensurate with his background, including some minor advertising matters. In the absence of his brother and the company comptroller, petitioner had the right to sign checks that his brother had already approved.

4. Irving Rosenthal never held stock in Marchessa or Laurie Rich; he didn't share in their profits or losses. He never attended a director's meeting of the companies. He had no fiscal responsibilities other than the aforementioned check signing chores.

5. During 1966, petitioner held a full-time teaching position at C.C.N.Y. He was also head of the journalism program and was involved in many committees. These activities required his presence on both the uptown and downtown campuses. The Chairman of the English Department of C.C.N.Y. confirmed that petitioner had a full-time teaching schedule and other scholastic responsibilities. He also furnished a form filed by petitioner notifying the school that petitioner worked from 7 to 10 hours a week at Laurie Rich as a general assistant.

6. In 1966, petitioner was at his brother's place of business for 7 to 10 hours a week. He was reimbursed for his services by either Marchessa or Laurie Rich each week but not by both for a given week. He was paid about \$75.00 a week in 1966.

7. In the spring of 1966, petitioner resigned from his brother's employ. Thereafter, he did not sign any checks for either corporation. By the end of 1966, both corporations ceased operation. Sam Rosenthal died in 1971.

8. Petitioner has furnished written statements from a number of people connected with the companies:

(a) The firm's head bookkeeper who was employed by Marchessa for three years stated that petitioner never gave instructions as to the operation of the firm and that he had authority to sign checks but only with prior approval. She also stated that petitioner did not handle the firm's tax forms.

(b) The company's supervisor of imports and exports with whom petitioner shared an office confirmed that Irving Rosenthal had nothing to do with the handling of financial matters, nor was he involved in the major policy-making decisions.

(c) A production and sales manager declared that petitioner played no major role in the policy, operations or management of Sam Rosenthal's business.

(d) A partner in the accounting firm which did an audit of Marchessa's books in 1966, an officer of the finance company which handled the resolution of Marchessa's credit problems and the vice-president of the finance company which factored Marchessa all confirm that the handling of the business was conducted solely by Sam Rosenthal and that petitioner was not involved in or responsible for the fiscal matters or operating procedure of Marchessa.

(e) The accountant whose firm served Sam Rosenthal for 35 years declared that he had never sought information from or given information to petitioner. The vice-president of Marine Midland Bank of New York, the bank that handled all of Sam Rosenthal's accounts including Marchessa and Laurie Rich asserted that petitioner's role in the business was insignificant.

(f) Finally, the attorney whose firm served as general counsel to Sam Rosenthal throughout his business career, described Irving Rosenthal as a nominal officer and part-time employee.

CONCLUSIONS OF LAW

A. Petitioner was not liable for the collection, accounting for or paying over of New York State withholding tax due from Marchessa International, Ltd. or Laurie Rich Knitwear Industries, Inc., as a responsible officer or employee.

B. The petition is sustained. There are no deficiencies against petitioner for income tax.

DATED: Albany, New York  
December 18, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER