

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD F. AND ROSALIE M. BLASKY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (4) 22 of the :
Tax Law for the Year (~~xxxxxx~~) 1968 :

State of New York
County of Albany


Violet Walker , 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 14th day of June , 1977 , she served the within
Notice of Decision by ^{certified} (~~registered~~) mail upon George S. Greenberg, Esq.

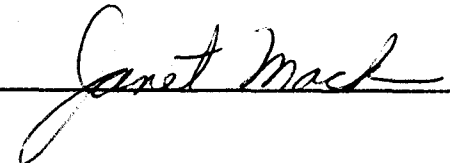
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: George S. Greenberg, Esq.
c/o Silberfeld, Danziger & Bangser
230 Park Avenue
New York, NY 10017
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

14th day of June , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BLASKY, HAROLD F. and ROSALIE M.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (3) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968

State of New York
County of Albany

Violet Walker

, 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 14th day of June, 1977, she served the within

Notice of Decision by ^{certified} ~~(certified)~~ mail upon Harold F. and Rosalie M.

Blasky ~~(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. Harold Blasky
4952 Sentinel Drive
Sumner, Maryland 20016

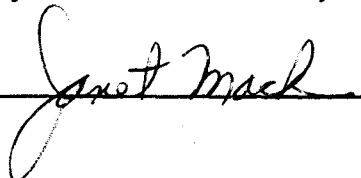
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~XXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

14th day of June, 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

June 14, 1977

TELEPHONE: (518) **457-1723**

Mr. and Mrs. Harold Blasky
4952 Sentinel Drive
Sumner, Maryland 20016

Dear Mr. and Mrs. Blasky:

Please take notice of the **Notice of 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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Enc.

cc: Petitioner's Representative:

Paul B. Coburn
Supervising Tax Hearing Officer

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD F. BLASKY and ROSALIE M. BLASKY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1968.	:	

Petitioners, Harold F. Blasky and Rosalie Blasky, 4952 Sentinel Drive, Sumner, Maryland 20760, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 00358).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 4, 1976 at 10:45 A.M., and continued and concluded on January 12, 1977 at 9:15 A.M. Petitioners appeared by Silberfeld, Danziger & Bangser (George S. Greenberg, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Howard Herman, Esq., of counsel).

ISSUES

I. Whether petitioners were subject to New York State taxes on personal income allegedly earned by petitioner, Harold Blasky, from a distributive share as a partner in a New York law firm for the year 1968?

II. Whether petitioners did knowingly and willingly fail to file a New York State resident return, and pay the taxes thereon for the year 1968, entitling the Tax Bureau to assess penalties pursuant to the Tax Law?

FINDINGS OF FACT

1. Petitioners, Harold F. Blasky and Rosalie M. Blasky, did not file a New York State Resident Income Tax Return for the year 1968, or pay a tax thereon.

2. The law firm of Greenberg, Trayman, Harris, et al. filed a 1968 New York State Partnership Return, signed by Murray B. Trayman, on February 17, 1969. A schedule "K" was attached thereto, indicating as "Partners Share of Income" in said partnership for Harold Blasky, one of the petitioners herein, the sum of \$26,000.00.

3. Petitioners did file a joint 1968 Maryland Income Tax Return, showing a gross income for petitioners of approximately \$26,000.00.

4. On October 28, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Harold F. Blasky and Rosalie M. Blasky, allocating partnership income of the New York law firm, pursuant to a formula percentage of \$26,000.00 earned from said New York partnership. Based thereon, it assessed a deficiency against petitioners of \$1,082.88, with penalties pursuant to section 685(a) of the Tax Law of \$270.72, plus interest of \$359.66, for a total deficiency of \$1,713.26.

5. The Washington law partnership was formed by written agreement on January 2, 1968, to which petitioner Harold Blasky was a signatory, and for which he served.

6. The New York partnership was formed in December of 1967, also by written agreement to which petitioner, Harold Blasky, was not a signatory, and for which he claims he did not serve in 1968 and received no income as a partner during the year 1968. However, he does admit he lent his name to the New York partnership and occasionally used its offices in New York City for unrelated business. However, he denies he was an active partner with authority to bind the New York partnership, or that he had the right to participate in its operations or participate in its profits and losses.

7. The petitioners also maintain that the New York and Washington partnerships are two distinct entities with separate clientele and with separate books and records and finances. It was claimed that the 1968 partnership tax return filed by the New York partnership, showing that petitioner Harold Blasky received a distributive share of income, was the result of the accountant's error. In this regard, an amended partnership return, unsigned, was offered to show that petitioner Blasky's distributive income share was deleted from said return, with the explanation that the accountant, in error, combined petitioner's New York and Washington income on the original return.

CONCLUSIONS OF LAW

A. That based on all the evidence, petitioners, Harold F. Blasky and Rosalie M. Blasky, have failed to prove that he was not an active partner in the New York firm for the year 1968, deriving a derivative share of partnership income therefrom.

B. That the original 1968 partnership return indicates that petitioner, Harold Blasky, was receiving a partnership share, while the offer of a belated and unsigned partnership income tax return for 1968, which deleted only the petitioner's share while keeping the other partners' share intact, is incredible on its face.

C. That petitioner, Harold F. Blasky, was an active partner entitled to receive income from the New York partnership.

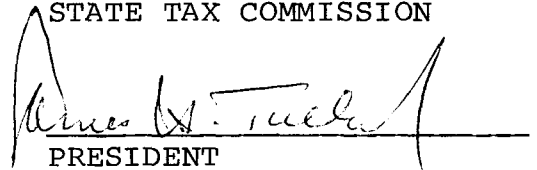
D. That, inasmuch as the partnership returns for the New York partnership for 1968 were prepared by outside accountants and without petitioner's knowledge, while petitioners were acting under the advice of counsel, there was a reasonable basis to believe that petitioners did not knowingly and willingly fail to file 1968 New York State Return. Accordingly, the penalties assessed against them are hereby waived.

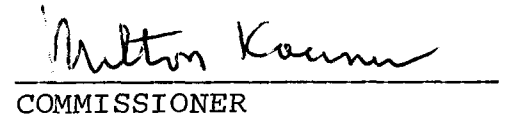
E. That the petition of Harold F. Blasky and Rosalie M. Blasky is granted to the extent that the penalties are hereby waived; that

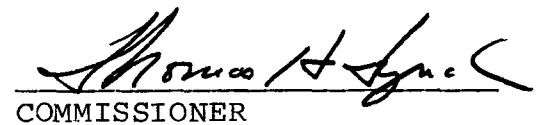
the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
June 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER