

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Lawrence Gray :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 22 & 23 of the Tax Law
for the Years 1973 & 1974. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by certified mail upon Lawrence Gray, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

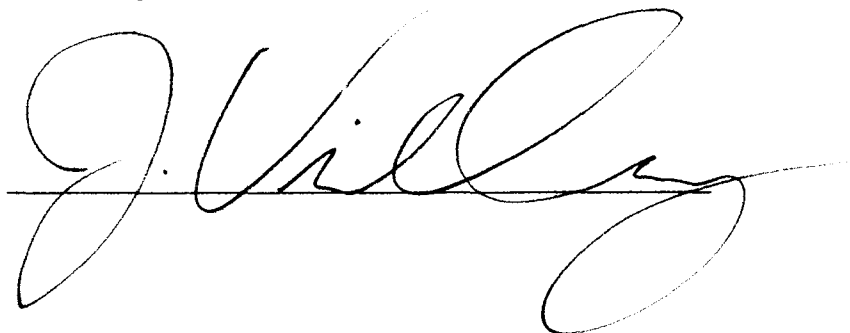
Lawrence Gray
123 MacCollum Rd.
Elbridge, NY 13060

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of October, 1980.

Deborah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Lawrence Gray :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Personal Income & UBT :
under Article 22 & 23 of the Tax Law
for the Years 1973 & 1974. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by certified mail upon Kevin E. Whelan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

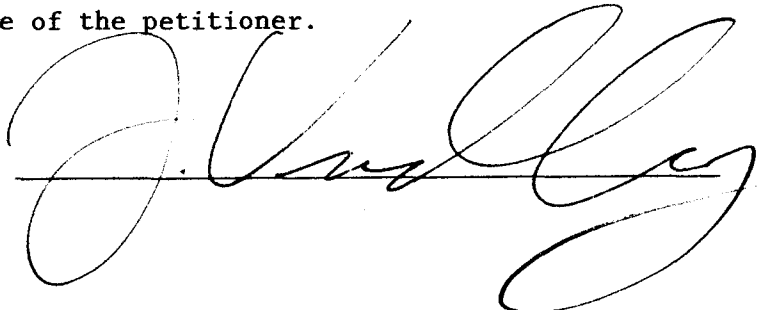
Mr. Kevin E. Whelan
109 Westvale Professional Bldg.
2105 W. Genesee St.
Syracuse, NY 13219

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
17th day of October, 1980.

Deborah A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 17, 1980

Lawrence Gray
123 MacCollum Rd.
Elbridge, NY 13060

Dear Mr. Gray:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 722 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Kevin E. Whelan
109 Westvale Professional Bldg.
2105 W. Genesee St.
Syracuse, NY 13219
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LAWRENCE GRAY :
for 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 1973 and 1974. :

DECISION

Petitioner, Lawrence Gray, 123 MacCollum Road, Elbridge, New York 13060, filed a petition for 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 1973 and 1974 (File No. 16129).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 E. Washington Street, Syracuse, New York, on March 19, 1980 at 10:45 A.M. Petitioner Lawrence Gray appeared with Kevin E. Whelan, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether certain rental income was subject to unincorporated business tax for 1973 and 1974.

FINDINGS OF FACT

1. Petitioner, Lawrence Gray, filed New York State combined income tax returns for 1973 and 1974. He did file a New York State Unincorporated Business Tax Return for 1973, but not for 1974.

2. On June 28, 1976, per a field audit, the Audit Division issued a Notice of Deficiency against petitioner for 1973 and 1974 on the grounds that rental income derived from a shopping center and bank building is subject to unincorporated business tax since petitioner operated a liquor store in the plaza type shopping center. Other adjustments were made to both personal income and unincorporated business taxes but are not at issue. The Notice of Deficiency imposed additional personal income and unincorporated business taxes of \$866.97, plus penalty of \$55.13 (pursuant to section 685(c) of the Tax Law) and interest of \$111.99, for a total due of \$1,034.09.

3. Petitioner, Lawrence Gray, had two separate businesses during the years at issue, an electrical and plumbing contracting business and a liquor store. In 1967, petitioner purchased two separately deeded parcels of property for his own account in Elbridge, New York. On one parcel, a small plaza type shopping center was built and on the other parcel a bank building was built in 1968. Petitioner mortgaged this investment through the Skaneateles Savings Bank. In this bank, petitioner had an account which all rents from the tenants were deposited. From this account, the Skaneateles Savings Bank would automatically deduct the mortgage payments and taxes on this investment.

4. The shopping center tenants all had long-term leases or were tenants of long standing who have continued in possession under renewals of their lease terms. The premises which petitioner rented to the tenants were unfurnished. Petitioner provided the tenants with no furniture, furnishings or equipment of any kind. Petitioner personally provided no services to the tenants, except for parking lot lighting and snow plowing of the parking area as needed during the winter. Petitioner provided no janitory, cleaning or interior maintenance services to the tenants, nor did petitioner provide utilities. The interest, taxes, lot lighting, snow plowing and depreciation expenses were deducted from rental income on petitioner's Schedule E Internal Revenue Service tax form.

5. Within the confines of the shopping center, petitioner operated an unincorporated business, the Elbridge Liquor Store. The liquor store was not petitioner's principal business; it generated a minimal fraction of petitioner's income. Petitioner's visits to the liquor store were infrequent as his activities were principally related to his contracting business which occupied the majority of petitioner's time. Petitioner's father-in-law or other relative usually clerked at the liquor store from the time of its inception until petitioner discontinued operation of the liquor store in December, 1975. One clerk at the liquor store was sufficient to run it. Since December, 1975, all of the stores in the shopping center have been occupied and operated by tenants.

6. Petitioner maintained separate books, records and bank accounts for the rental income and the incomes from the liquor store and contracting business. The funds of one operation were not used to operate the other businesses or investments.

CONCLUSIONS OF LAW

A. That the rental income from the parcels of real property owed by Lawrence Gray are not subject to the unincorporated business tax within the meaning and intent of section 703(d) and (e) of the Tax Law. Therefore, the income derived from the shopping center and bank building is not to be combined with the liquor store income for unincorporated business tax purposes.

B. That the Audit Division is hereby directed to modify the Notice of Deficiency issued June 28, 1976 to the extent of reducing the unincorporated business taxable income by the rental income.

C. That the petition of Lawrence Gray is granted to the extent indicated in Conclusion of Law "B", and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

James A. Tueller
PRESIDENT

Thomas H. C.
COMMISSIONER

Francis Q. Koenig
COMMISSIONER