

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP J. & ZENA DAVIS

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) 1960.

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

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 14th day of January, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Philip J. & Zena Davis (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. Philip J. Davis  
200-19 45th Road  
Bayside, New York 11361

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

14th day of January, 1974.

James S. Van Patten

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino,

~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
January 14, 1974

Mr. & Mrs. Philip J. Davis  
200-19 45th Road  
Bayside, New York 11361

Dear Mr. & Mrs. Davis:

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

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
PHILIP J. & ZENA DAVIS	:	DECISION
	:	
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1960.	:	

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Philip J. and Zena Davis, filed a petition for the redetermination of a deficiency issued under date of October 17, 1966, in the amount of \$90.75 plus interest of \$29.98 and a penalty under section 685(b) of the Tax Law of \$4.54 for a total of \$125.27, in personal income tax under Article 22 of the Tax Law for the year 1960.

A hearing was duly held on June 14, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer, and said hearing was adjourned.

The petitioner appeared without a representative. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. A further hearing was duly scheduled for January 8, 1973, but the petitioner failed to appear. The record of the case has been duly examined and considered.

ISSUE

The sole issue in this case is whether the Notice of Deficiency is timely under section 683(c)(1)(c) by reason of the alleged failure of the taxpayer to file with the state, a notice under section 659 of a change made by Federal authorities on his Federal taxable income.

FINDINGS OF FACT

1. Mr. Philip J. Davis asserts that his accountant, Abraham Tannenbaum, of Queens County handled both his Federal and state tax matters. He has produced an affidavit of Mr. Tannenbaum to the effect that Mr. Tannenbaum mailed a notice of Federal changes to the state on April 28, 1964. An adjournment of the hearing was granted so that Mr. Tannenbaum could appear and testify but on the adjourned date, no one appeared.

CONCLUSIONS OF LAW

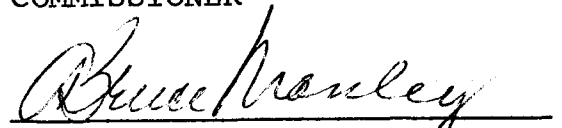
The assertions of the taxpayer and the affidavit as to mailing cannot be credited where, as here, the taxpayer was given a chance to produce the witness and he has failed to do so.

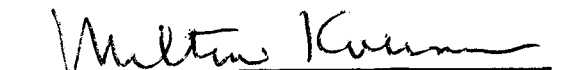
The Notice of Deficiency herein is found to be correct and is due together with such further interest, if any, as may be computed under section 684 of the Tax Law.

DATED: Albany, New York  
January 9, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER