

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CORNELIUS MILNER

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) 1967 & 1968 :

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 9th day of January , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Cornelius Milner

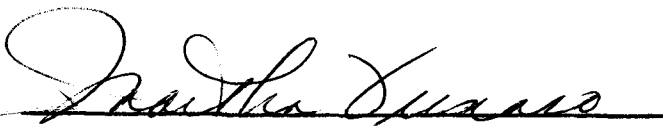
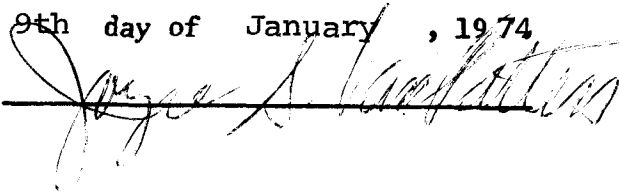
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Cornelius Milner
1270 Fifth Avenue
New York, New York 10029

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

9th day of January , 1974



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
Mario A. Procaccino,
~~NORMAN K. KULINIK~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

January 9, 1974

Mr. Cornelius Milner
1270 Fifth Avenue
New York, New York 10029

Dear Mr. Milner:

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

In the Matter of the Petition	:	
of	:	
CORNELIUS MILNER	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1967 and 1968.	:	

Cornelius Milner filed a petition for the redetermination of a deficiency dated April 12, 1971, in the amount of \$713.54 plus interest of \$111.78 and a penalty for negligence in the amount of \$35.68 for a total of \$861.00 in personal income tax under Article 22 of the Tax Law for the years 1967 and 1968.

A hearing was duly held on December 4, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner appeared without a representative. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case involve a pension which first started while petitioner was a nonresident and alimony payments made to a former wife.

FINDINGS OF FACT

1. Petitioner, Cornelius Milner, received a military pension in 1967 and 1968, which he failed to report in his New York tax return. The amounts of said pension are estimated in the deficiency notice but are hereby found to be the amounts of \$4,806.84 for 1967 and \$4,947.42 for 1968. The failure of petitioner to report these

was due to the fact that he first started receiving this pension while he was a resident of Ohio and even after he had moved to New York, he continued to bank the checks in Ohio for the benefit of a former wife and her children.


2. Petitioner, Mr. Milner, contributed the amounts of \$3,808.00 and \$4,189.00 respectively in 1967 and 1968 for the support of his former wife and her children. A divorce decree and separation agreement provided for child support payments in three times the amount set for alimony payments to the former wife. This is more than was allowed in the deficiency notice.

CONCLUSIONS OF LAW


A resident is taxable upon his entire income no matter from where derived. The payments to the former wife can be deducted only to the extent of the 25% portion which is considered alimony. The penalty is cancelled as no negligence has been shown. The deficiency is recomputed to be \$533.75 with interest to the date of deficiency of \$84.31 for a total of \$618.06 with such additional interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
January 9, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

1270 Fifth Ave., Apt 12H
New York, N.Y. 10029
January 27, 1974

State Of New York
State Tax Commission
Albany, N.Y. 12226

Gentlemen:

Re: Your letter of January 9, 1974

Attn: Mr. Nigel G. Wright, Hearing Officer

Please be advised that my wife and I consider your DECISION unfair as well as adverse to our best interest. We, hereby, request that our case be reviewed in a court of law by an impartial jury of my peers. The justification for our request is as follows:

1. We believe that the Statute of Limitation of the State of New York tax laws would have accrued to our favor if the State had taken the necessary time and made the necessary research effort to accurately document its tax deficiency claim. The State of New York tax agent made unfair, arbitrary and incorrect assumptions for the purpose of making these claims before the expiration of the Statute of Limitation.

2. We contend, further, that the hearing in which you arrived at your DECISION was basically unfair to us because ^{we} did not have the benefit of expert legal counsel to advocate our point of view. The very fact that we are financially unable to engage the necessary tax lawyers to represent us is inherently unfair. Your letter alludes to a courtesy copy being provided to the petitioner's representative law bureau. Are we to infer from this that we were entitled to legal representation at the hearing?

The State of New York has a responsibility to insure that all of its citizens are protected by diligent attention to details of due process of law under the Constitution. Therefore, we feel that we are entitled to a review of your adverse decision in an impartial court of law. Enclosed please find a copy of my letter of January 15, 1972 which expands on our contentions.

Very truly yours,


Cornelius Milner

1270 Fifth Ave., Apt 12H
New York, N.Y. 10029
January 15, 1972

State of New York
Department of Taxation and Finance
State Tax Commission
State Campus
Albany, N.Y. 12227

Gentlemen

Attn: Mr. Louis Etlinger, Chief, Review Unit

Re: File #8-16445729 Petition for Redetermination of Deficiencies for the years 1967 and 1968.

Regarding your letter of January 13, 1972 pertaining to the preliminary hearing conducted by Mr. Sol X. Goldstein in which my wife, Mrs. Dora Milner, was in attendance.

Apparently in accordance with Mr. Goldstein's report to you it was stated that a careful review was made of the information in the file and that the alleged deficiency must be sustained as issued. This was an arbitrary judgment on the part of Mr. Goldstein despite the evidents in the file that the computation to arrive at the deficiency was based on incorrect data. Your attention is invited to copies of my Air Force pension W-2 forms for the years 1967 and 1968. You will notice the differences between my actual pension income during the subject years and the data used to compute my alleged deficiency.

The errors in the computation of my alleged deficiency were committed by a Mr. Russo of the Income Tax Section located at 80 Centre Street, New York City. Mr. Russo, in an effort to declare a tax deficiency before the Statute of Limitation expired, used faulty assumptions which resulted in the incorrect data being utilized. Therefore, it is my contention that the alleged deficiency is illegal and is tantamount to arbitrary confiscation in this case.

In my judgment the preliminary hearing was unfair because the factors described above were completely ignored.

Very truly yours,



Cornelius Milner

Cornelius Milner
1270 Fifth Ave.
New York, N.Y. 10029

CERTIFIED

No. 299089

MAIL

State of New York
State Tax Commission
Department of Taxation and Finance
State Campus
Albany, N.Y. 12226

Mr. P. Wright