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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES O. PORTER and

ANN D. PORTER

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the Year(s) 1954, 1955, 1956 :
and 1957.

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

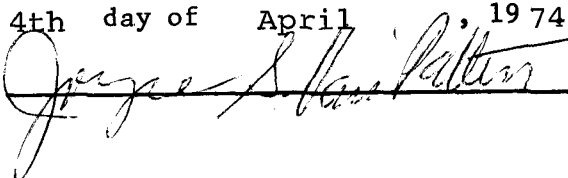
State of New York
County of Albany

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 4th day of April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon JAMES O. PORTER and
ANN D. PORTER (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. James O. Porter
902 Ellicott Square Building
Buffalo 3, 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 (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

4th day of April, 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES O. PORTER and

ANN D. PORTER

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the Year(s) 1954, 1955, 1956
and 1957.

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 4th day of April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon HENRY M. PORTER, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

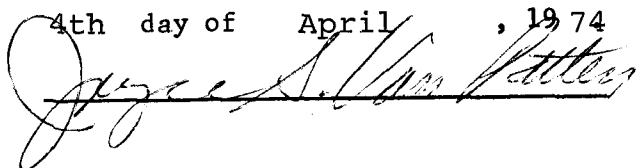
Henry M. Porter, Esq.
70 Niagara Street
Buffalo, New York

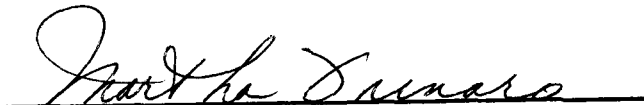
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (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

4th day of April, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
~~XKORNAKXKXKXN~~, PRESIDENT

A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 4, 1974

Mr. & Mrs. James O. Porter
902 Ellicott Square Building
Buffalo 3, New York

Dear Mr. & Mrs. Porter:

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

Please take further notice that pursuant to **section 373 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
JAMES O. PORTER and ANN D. PORTER	:	DETERMINATION
	:	
for Revision or Refund of Personal Income	:	
Taxes under Article 16 of the Tax Law for	:	
the Years 1954, 1955, 1956 and 1957.	:	
	:	
	:	

Applicants, James O. Porter and Ann D. Porter, have filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1954, 1955, 1956 and 1957.

A formal hearing was held before Martin Schapiro, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on November 10, 1964, at 9:00 A.M. Applicants appeared by Henry M. Porter, Esq.

ISSUE

- I. Did the Income Tax Bureau properly estimate applicants, James O. Porter and Ann D. Porter's income for the years 1954, 1955, 1956 and 1957?
- II. Did the Income Tax Bureau properly assess applicants, James O. Porter and Ann D. Porter, a 100% penalty for fraud?

FINDINGS OF FACT

- 1. Applicants, James O. Porter and Ann D. Porter, filed New York State combined resident income tax returns for the years 1954, 1955, 1956 and 1957.

2. On April 14, 1961, the Income Tax Bureau issued a Notice of Additional Assessment against applicants, James O. Porter and Ann D. Porter, for the year 1954 in the sum of \$702.70 for additional normal tax due and \$1,728.64 for penalty and interest. On September 26, 1963, the normal tax due was revised downward to \$368.38 and the penalty and interest was revised downward to \$1,119.88. On April 14, 1961, the Income Tax Bureau issued a Notice of Additional Assessment against applicants for the year 1955 in the sum of \$1,254.02 for additional normal tax due and \$2,783.92 for penalty and interest. On September 26, 1963, the normal tax was revised downward to \$520.62 and the penalty and interest was revised downward to \$1,457.74. On April 14, 1961, the Income Tax Bureau issued notices of additional assessments against applicants for the year 1956 in the sum of \$720.20 for normal tax and \$1,425.99 in penalties and interest, and for 1957 in the sum of \$825.20 for normal tax and \$1,435.84 for penalties and interest. On October 4, 1963, the Income Tax Bureau issued another Notice of Additional Assessment in the sum of \$310.56 for normal tax and \$1,199.12 for penalty and interest for the year 1957.

3. For the period 1954 through 1957, applicants, James O. Porter and Ann D. Porter, reported a total income of \$13,576.46.

4. Applicants, James O. Porter and Ann D. Porter's tax returns for the period 1954 through 1957 were audited and the taxable income was revised upward based on estimates made by

the auditor for food, clothing, education and other living expenses.

5. During the period in question, applicants, James O. Porter and Ann D. Porter, resided in an upper class neighborhood. Their children attended the Buffalo Seminary, a private school, and Cornell University. In 1955, the family took a five-week trip to Europe. They employed domestic help. The children took music and dancing lessons.

6. In 1957, applicant, James O. Porter, purchased controlling interest in Welland Oils Ltd., believed to be inactive and without funds at the time of purchase. It had no known existing place of business. Lake front property at Point Albino, Ontario, Canada, a well known summer colony, was purchased in the name of Welland Oils Ltd. The telephone book listed applicant's name as maintaining a telephone at the lake front property.

7. Applicants, James O. Porter and Ann D. Porter, failed to submit documentary or other sufficient evidence to show that the estimates of additional income were incorrect.

8. The Income Tax Bureau failed to submit documentary or other sufficient evidence to prove that applicants, James O. Porter and Ann D. Porter, were guilty of fraud with intent to evade the payment of taxes.

CONCLUSIONS OF LAW

A. That the Income Tax Bureau's estimate of applicants, James O. Porter and Ann D. Porter's taxable income for the years 1954 through 1957 were correct since applicants failed

to submit documentary or other sufficient evidence to dispute the calculations.

B. That the Income Tax Bureau did not properly assess applicants, James O. Porter and Ann D. Porter, a 100% penalty for fraud since they failed to meet the burden of proof by presenting documentary or other sufficient evidence to support its contention.


C. That the applications of James O. Porter and Ann D. Porter is granted to the extent that the 100% penalties for fraud are eliminated. The application is denied in all other respects.

DATED: Albany, New York
April 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER