

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH L. BURD and CLARA BURD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(5)~~ 22 of the :
Tax Law for the Year(s) ~~1970 and 1971~~ :
1970 and 1971.

State of New York
County of Albany

Catherine Steele, 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 6th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Joseph L. Burd and Clara Burd ~~(representative of the)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Joseph L. Burd
10395 Collins Avenue
Bal Harbour, Florida 33154
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)~~ ~~XOXOXOX~~ 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

6th day of August, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH L. BURD and CLARA BURD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(6)~~ 22 of the :
Tax Law for the Year(s) ~~xxx~~ Period(s) :
1970 and 1971.

State of New York
County of Albany

Catherine Steele, 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 6th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Louis M. Brass, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Louis M. Brass, Esq.
16 Court Street
Brooklyn, New York 11241

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

6th day of August, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

August 6, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Joseph L. Burd
10395 Collins Avenue
Bal Harbour, Florida 33154

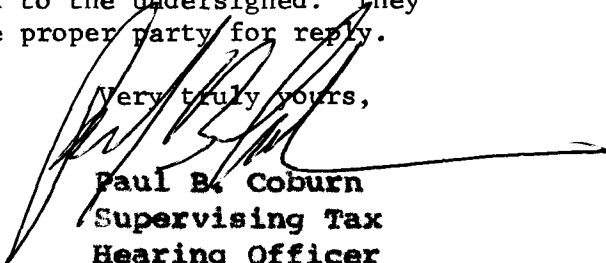
Dear Mr. & Mrs. Burd:

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

Please take further notice that pursuant to
Section ~~205~~ **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,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH L. BURD and CLARA BURD	:	DECISION
	:	
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for the	:	
Years 1970 and 1971.	:	

Petitioners, Joseph L. Burd and Clara Burd, 10395 Collins Avenue, Bal Harbour, Florida 33154, have filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971.

A formal hearing was held at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York on January 13, 1976 at 9:00 A.M. before Nigel G. Wright, Hearing Officer. The taxpayers were represented by Louis M. Brass, Esq. The Income Tax Bureau was represented by Peter Crotty, Esq., (Alexander Weiss, Esq. and Richard Kaufman, Esq., of counsel.)

ISSUE

Does reasonable cause exist for cancelling assessed penalties for failure to file non-resident income tax returns where the taxpayers' failure to file was due to their reliance upon the accountant who had prepared all their income tax returns for 40 years, and whether the accountant overlooked the

preparation of non-resident state income tax returns for 1970 and 1971?

FINDINGS OF FACT

1. Petitioners, Joseph L. and Clara Burd, filed New York State non-resident income tax returns for the years 1970 and 1971, on March 14, 1973, and paid the tax shown to be due on such returns plus interest at 1/2% per month from the due date for timely filing.

2. A Notice and Demand for Payment of Income Tax Due for the years 1970 and 1971, under File No. 2-209670 8, was issued against the taxpayer on September 21, 1973, for a penalty of \$5,432.53.

3. The taxpayers, Joseph L. and Clara Burd, paid the penalty demanded and on October 28, 1974, petitioned for a refund of the penalty for late filing of the New York State income tax returns for 1970 and 1971.

4. The taxpayers, Joseph L. and Clara Burd, were New York State residents until 1969. Their accountant prepared all their Federal and New York State income tax returns for 40 years, and the taxpayers, Joseph L. and Clara Burd, signed and paid as directed by that accountant during those 40 years.

5. For 1970 and 1971, the accountant prepared Federal income tax returns for the taxpayers, Joseph L. and Clara Burd, but overlooked preparing non-resident New York State income tax returns for the taxpayers who became Florida residents in 1969.

6. The taxpayer, Joseph Burd, had real estate income from a New York State partnership in the years 1970 and 1971.

7. For the years 1970 and 1971, a partner in a real estate venture with the taxpayer, Joseph L. Burd, filed New York State partnership income tax returns. In January, 1973, the New York State Income Tax Bureau notified the taxpayer, Joseph L. Burd, that there was no record of his having filed New York State income tax returns for the years 1970 and 1971.

8. The taxpayer, Joseph L. Burd, forwarded the Income Tax Bureau audit supervisor's letter to his accountant. On January 31, 1973, that accountant wrote to the Income Tax Bureau that the said accountant had "overlooked" the preparation of New York State income tax returns for the taxpayers, Joseph L. Burd and Clara Burd, for the years 1970 and 1971. He promised to prepare them for the taxpayers' expeditious filing.

9. By a letter dated March 2, 1973 to the taxpayers' accountant, the Income Tax Bureau advised that the returns for 1970 and 1971 would have to be submitted promptly to avoid a penalty for not submitting the returns in question.

10. Taxpayers, Joseph L. Burd and Clara Burd, submitted New York State income tax returns for 1970 and 1971 on March 14, 1973, and paid the tax shown on the returns. For 1970, the tax was \$10,615.72 plus interest, of \$1,220.80. For 1971, the tax was \$6,511.43, plus interest of \$358.13. The interest was paid on September 21, 1973.

11. The taxpayers, Joseph L. Burd and Clara Burd, filed a petition on July 29, 1974, requesting a redetermination of the penalty of \$5,432.53 which had been imposed by the Income Tax Bureau. They were advised on

August 26, 1974, that they would have to pay the penalty before their petition would be entertained.

12. By a notice dated February 24, 1975, the Income Tax Bureau notified the taxpayers, Joseph L. Burd and Clara Burd, that their petition had been filed prematurely and was being considered to be filed as of the February 24, 1975 date of the formal notice of disallowance of their claim for refund of the penalty.

CONCLUSIONS OF LAW

A. That the taxpayers, Joseph L. Burd and Clara Burd's reliance upon their accountant to prepare and submit for them all required New York State income tax returns, based upon 40 years' satisfactory experience with that Certified Public Accountant, constituted reasonable cause for failure to file 1970 and 1971 income tax returns and pay the tax due thereon within the purview of sections 685(a) (1) and 685(a) (2) of the Tax Law.

B. That the petition of the taxpayers, Joseph L. Burd and Clara Burd, is granted.

DATED: Albany, New York
August 6, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER