

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
JAMES E. and DOROTHY WALSH
and LILLIAN WALSH
d/b/a WALSH'S TILE BAR
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated
Business Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~XXXXXX(X)~~
1969 and 1970.

AFFIDAVIT OF MAILING

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 26th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Edwin S. Phillips, Esq.

& Howard Gondree, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edwin S. Phillips & Howard Gondree, Esqs.
One M & T Plaza
Buffalo, New York 14203

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
26th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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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 26th day of August, 1976, she served the within Notice of Decision by (certified) mail upon James E. & Dorothy Walsh & Lillian Walsh ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: James E. & Dorothy Walsh & Lillian Walsh d/b/a Walsh's Tile Bar 59 Allegany Street Buffalo, New York 14220 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
26th day of August, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 26, 1976

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

James E. & Dorothy Walsh & Lillian Walsh
d/b/a Walsh's Tile Bar
59 Allegany Street
Buffalo, New York 14220

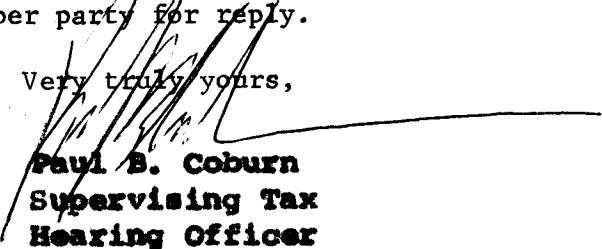
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **690 & 722** 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 :

JAMES E. and DOROTHY WALSH :

and :

LILLIAN WALSH :

d/b/a :

WALSH'S TILE BAR :

DECISION

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 1969 and 1970. :

Petitioners, James E. and Dorothy Walsh and Lillian Walsh, d/b/a Walsh's Tile Bar, 59 Allegany Street, Buffalo, New York, petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1969 and 1970.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on September 11, 1975, at 10:00 A.M., before L. Robert Leisner, Hearing Officer. The taxpayers appeared by Edwin S. Phillips, Esq. and Howard Gondree, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the income of Walsh's Tile Bar was underreported in the years 1969 and 1970.

II. Whether James E. Walsh was subject to unincorporated business tax in the years 1969 and 1970.

FINDINGS OF FACT

1. Petitioners, James E. and Dorothy Walsh and Lillian Walsh d/b/a Walsh's Tile Bar timely filed New York State income tax returns for the years 1969 and 1970.

2. A Notice of Deficiency in personal income and unincorporated business taxes for the years 1969 and 1970 was issued on January 29, 1973, against the taxpayers under File No. 0-36416093 and P/S 4659.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. The Income Tax Bureau asserted additional income from the bar business each year against all of the taxpayers. It asserted that James Walsh and Lillian Walsh were subject to additional income tax and unincorporated business tax. It also asserted that the gain from the sale of James E. Walsh's real property to the City of Buffalo in 1970, in the amount of \$31,691.15 was subject to the unincorporated business tax.

5. The Income Tax Bureau reconstructed additional gross receipts from bank deposits and cash purchases in the amount of \$10,143.93 for the year 1969 and in the amount of \$10,792.40 for the year 1970.

6. Lillian Walsh operated Walsh's Tile Bar from 1941. In the 1940's Ann Rogers and Lillian Walsh owned the business together.

In the 1940's Lillian Walsh bought Ann Roger's share of the business. From 1941 until the business was terminated the liquor license was in Lillian Walsh's name.

7. Lillian Walsh regularly filed her Federal and State income tax returns and a schedule C for each year. In the beginning of the operation of the bar, James Walsh did not work for the business. His father, who worked there too, became ill and asked him to help. This was in 1949.

8. From 1949 on, James Walsh was listed on the payroll and worked for Lillian Walsh. There were detailed weekly time books for James Walsh, Erma E. Crowe and Dorothy Donahue, with withholding taxes and Social Security deducted from their pay. Lillian Walsh also paid unemployment insurance for them.

9. In 1964, Lillian Walsh became ill and deeded the real property at 194 W. Genesee Street to James Walsh. She lost her sight and had a leg amputated. James Walsh never considered himself the owner of the business although he continued to run the bar. Lillian Walsh lived over the bar until she was moved to a nursing home and her flat remained intact over the bar until the business terminated. James Walsh never resided at the bar.

10. Lillian Walsh employed an accountant and filed her own tax returns during the years in question and for many prior years as well. The returns showed the type of business, its income and expenses and the payment of wages to its employees.

11. The deed for 194 W. Genesee Street to James Walsh was recorded in 1964, years before the City of Buffalo purchased the property. All of the proceeds were paid to James Walsh.

12. James Walsh always considered himself an employee of Lillian Walsh who always owned the business.

13. In the closing statement of the City of Buffalo's purchase of the real property from James E. Walsh, no furniture, fixtures, or business assets were sold and all of the payment was made to James E. Walsh.

14. The tax examiner, in examining the affairs of Walsh's Tile Bar found that many items were paid by cash and then others by check. That, by reconstructing the cash payments and the bank deposits the actual gross receipts were understated.

	<u>1969</u>	<u>1970</u>
Gross receipts	\$ 41,518.64	\$41,120.67
Reported receipts	30,539.31	26,663.90
Unreported receipts	<u>10,979.33</u>	<u>\$14,456.77</u>
(Prev. loss)	(835.40)	(3,664.37)
Reconstructed Net Income	<u>\$10,143.93</u>	<u>\$10,792.40</u>

15. The checking account was jointly held by Lillian Walsh and James Walsh, her son. He utilized this checking account for his personal affairs as well as for business purposes.

16. The Income Tax Bureau found that of this income only \$7,550.00 in 1969 and \$10,792.40 in 1970 was reported by James E. Walsh as wages.

17. The taxpayer, James Walsh, asserted that he had deposited his own funds in the bank account for items such as property taxes or large purchases, but failed to present documentation of this. His failure to keep any record of this or separate accounts weighs against him.

18. Lillian Walsh, who was in the nursing home, did not receive the unreported income from the bar.

19. James Walsh had additional salary from Walsh's Tile Bar in the amount of \$2,643.93 in 1969 and \$3,592.40 in 1970.

CONCLUSIONS OF LAW

A. That Lillian Walsh (now deceased) was the legal owner of Walsh's Tile Bar, although in a nursing home during the years in question. She kept the liquor license and filed tax returns. She did not, however, own the real property at 194 W. Genesee Street. Her tax returns were correct as filed and there is no deficiency for income tax or unincorporated business tax against her.

B. That real property deeded in 1964 at 194 W. Genesee Street was not the property of Walsh's Tile Bar or Lillian Walsh. The sale of the real property was not subject to unincorporated business tax.

C. James E. Walsh was an employee of Walsh's Tile Bar. He is not liable for unincorporated business tax under sections 703(b), (d) and (c) of the Tax Law.

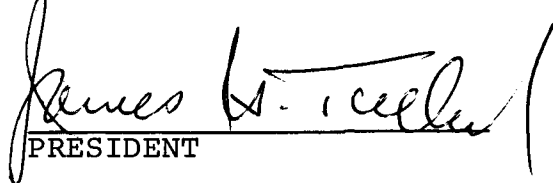
D. That with allowance for amounts previously reported as wages, James Walsh failed to report \$2,643.93 in 1969 and \$3,592.40

in 1970 of additional income from Walsh's Tile Bar. The deficiencies in personal income taxes against James E. Walsh and Dorothy Walsh are sustained in full.


E. That pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
August 26, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER