

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK H. and CHARLOTTE C. WRIGHT:

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

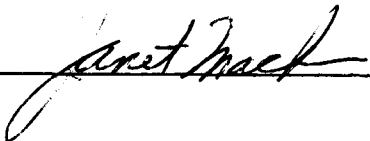
John Huhn, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of September, 1977, she served the within Notice of Decision by ^{certified} ~~(certified)~~ mail upon Frederick H. and Charlotte C. Wright ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Frederick H. Wright
Rural Route #1
Hurleyville, New York 12747

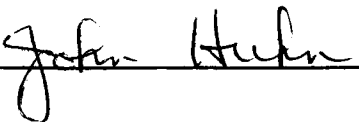
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~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

29th day of September, 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 29, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. and Mrs. Frederick H. Wright
Rural Route #1
Hurleyville, New York 12747

Dear Mr. and Mrs. Wright:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: ~~Repetition's Representative~~
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
FREDERICK H. and CHARLOTTE C. WRIGHT
for Redetermination of Deficiency or
for Refund of Personal Income Taxes under
Article 22 of the Tax Law for the Year
1970.

DECISION

Petitioners, Frederick H. and Charlotte C. Wright, residing at Rural Route #1, Hurleyville, New York 12747, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 10893).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, the State Campus, Bldg. #9, Albany, New York, on May 18, 1977 at 1:15 P.M. Petitioner Frederick H. Wright appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq. of counsel).

ISSUE

Was certain income taxable in the year 1970 or in the year 1971?

FINDINGS OF FACT

1. The Income Tax Bureau contended that vacation pay which petitioners reported on their 1971 New York State personal income tax return should rather have been on their 1970 tax return. It adjusted petitioners' 1970 and 1971 tax returns accordingly and issued a Notice of Deficiency in the amount of \$244.74 additional tax due, plus \$42.01 interest, for a sum of \$286.75 for the year 1970.

An overpayment for the year 1971 resulting from the aforesaid adjustment in the sum of \$151.12 was applied against the 1970 deficiency.

2. Petitioner Frederick H. Wright contended that he retired at the end of the year 1970 and was not required to report for work near the end of said year. He had accumulated vacation pay due to be paid to him in 1971. He deposited the check in payment of his vacation pay in his bank in January 1971.

3. The check in payment of the vacation pay was made available to petitioner Frederick H. Wright by his employer on December 31, 1970. The employer reported the vacation pay on petitioner's 1970 withholding tax statement. It was the custom of the employer to pay vacation pay in advance. Petitioner used the calendar year cash basis method of accounting.

CONCLUSIONS OF LAW

A. That the income was constructively received by petitioner Frederick H. Wright in the year 1970 and was taxable in said year in accordance with the meaning and intent of section 451 of the Internal Revenue Code.

B. That the petition of Frederick H. and Charlotte C. Wright is denied and the Notice of Deficiency issued February 25, 1974 is sustained.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER