

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS F., JR. and MARILYN A. SPRUCK:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Personal Income** :
Taxes under Article ~~(X)~~ 22 of the :
Tax Law for the Year ~~(XXXXXXXXXX)~~ 1972 :

State of New York
County of Albany

John Huhn

, being duly sworn, deposes and says that

~~X~~he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, ~~X~~he served the within

Notice of Decision by (certified) mail upon Thomas F., Jr. and
Marilyn A. Spruck

~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Thomas F., Jr. and Marilyn A. Spruck
830 Gleason Circle
East Rochester, New York 14445

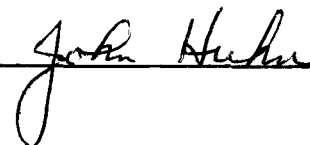
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

24th day of April , 1978





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STATE TAX COMMISSION

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, being duly sworn, deposes and says that

~~XX~~He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 19 78, ~~XX~~he served the within

Notice of Decision by (certified) mail upon George H. Brown, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: George H. Brown, Esq.
490 Executive Office Bldg.
Rochester, New York 14614

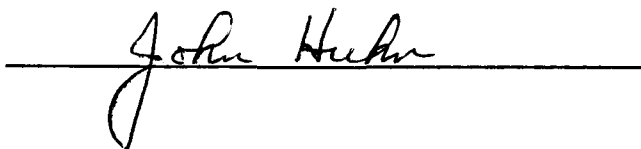
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

24th day of April , 19 78







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

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

April 24, 1978

**Thomas F., Jr. and Marilyn A. Spruck
830 Gleason Circle
East Rochester, New York 14445**

Dear Mr. & Mrs. Spruck:

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 **(§ 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 CHERMATY
HEARING EXAMINER**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

THOMAS F., JR. and MARILYN A. SPRUCK : DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1972. :

Petitioners, Thomas F., Jr. and Marilyn A. Spruck, 830 Gleason Circle, East Rochester, New York 14445, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 13774).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 10, 1977 at 10:45 A.M. Petitioners appeared by George H. Brown, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner Thomas F. Spruck, Jr. earned unreported income in the amount of \$280.00 during 1972.

FINDINGS OF FACT

1. Petitioners, Thomas F., Jr. and Marilyn A. Spruck, timely filed original and amended New York State joint personal income tax returns for the year 1972. Petitioners reported total income for 1972 of \$4,813.38. Since this amount was

less than the amount which would have required the payment of personal income tax (i.e. \$5,000.00 or less where married and filing a joint return), the Income Tax Bureau refunded the total tax withheld from the wages of petitioner Thomas F. Spruck, Jr.

2. A New York State Special Investigation Bureau report indicated that petitioner Thomas F. Spruck, Jr. had unreported income in the amount of \$760.00. The Income Tax Bureau accordingly issued a Notice of Deficiency against petitioners on February 24, 1976 in the amount of \$55.06 in personal income tax, plus \$11.82 in interest, for a total due of \$66.88. The Special Investigations Bureau investigator subsequently discovered an error in his findings which reduced the unreported income from \$760.00 to \$280.00. Therefore, the investigator verbally agreed to modify the Notice of Deficiency accordingly.

3. Petitioner Thomas F. Spruck, Jr. was employed by the County of Steuben, New York, Sheriff's Office in 1972. Extensive property damage caused by Hurricane Agnes had resulted in petitioner's assignment to extra duty after hours. He was assigned to guard certain apartment houses in Corning, New York. The Corning Glass Works, Corning, New York, paid the Steuben County Deputy Sheriffs Association \$280.00 for the extra duty services performed by petitioner Thomas A. Spruck, Jr. For this work petitioner was handed two checks by a member of the sheriff's office totaling said amount.

4. Petitioner contended that in performing the extra duty, he believed he was working for the sheriff's office and that the \$280.00 was included in the wage and tax statement issued by the Steuben County Treasurer's Office.

5. Petitioner did not submit payroll stubs or any other satisfactory evidence to show that the \$280.00 was included in the aforementioned wage and tax statement.

CONCLUSIONS OF LAW

A. That petitioner Thomas F. Spruck, Jr. earned unreported taxable income in the amount of \$280.00 during 1972. Petitioners have failed to sustain the burden of proof necessary to show otherwise, as required by section 689(e) of the Tax Law.

B. That reduction of the unreported income from \$760.00 to \$280.00 resulted in a reduction of the personal income tax due for 1972 from \$55.06 to \$40.28, together with such interest as may be lawfully owing; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 24, 1976, and that, except as so granted, the petition of Thomas F., Jr. and Marilyn A. Spruck is denied.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

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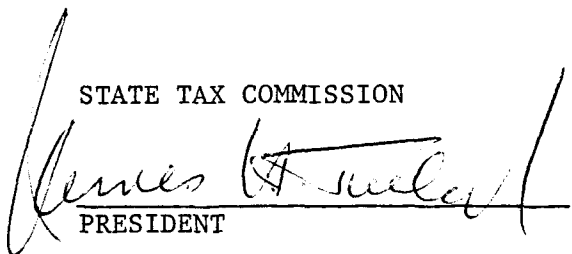
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DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


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