

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

David B. & Nancy L. Fein :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1970. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon David B. & Nancy L. Fein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David B. & Nancy L. Fein

4724 Poe Ave.

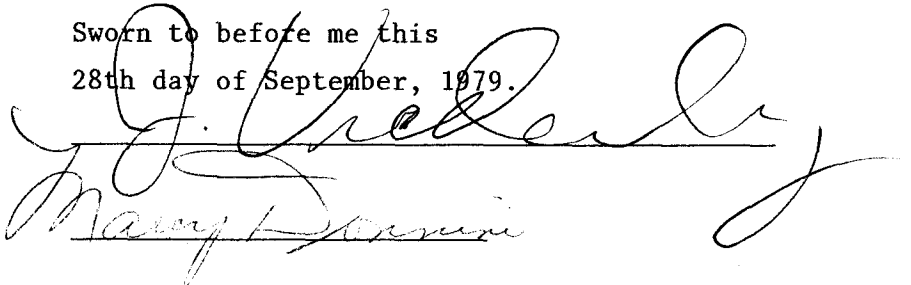
Woodland Hills, CA 91364

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

28th day of September, 1979.

The block contains two handwritten signatures. The first signature, in dark ink, is "J. Vredenburg" and is written over a horizontal line. The second signature, in lighter ink, is "Nancy L. Fein" and is written below the first signature.

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

David B. & Nancy L. Fein  
4724 Poe Ave.  
Woodland Hills, CA 91364

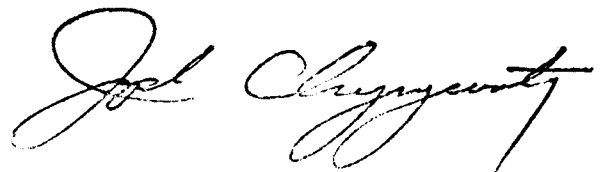
Dear Mr. & Mrs. Fein:

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,

A handwritten signature in cursive script, appearing to read "Joel Chynoweth".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

DAVID B. FEIN and NANCY L. FEIN : DECISION

for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1970.

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Petitioners, David B. and Nancy L. Fein, 4724 Poe Avenue, Woodland Hills, California 91364, 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 1970 (File No. 13172).

On August 7, 1978, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the Commission, based on the entire record contained in the file. After consideration of said record, the Commission renders the following decision.

#### ISSUE

Whether the 1970 New York State personal income tax return filed by petitioners included the correct wage income and credit for personal income tax withheld from wages.

#### FINDINGS OF FACT

1. Petitioners, David B. and Nancy L. Fein, timely filed a New York State personal income tax return for 1970. In lieu of a Wage and Tax Statement, petitioner David B. Fein attached a Certificate of New York State Income Tax Withheld (Form IT-2102.6) to the tax return. Form IT-2102.6 indicated that wages of \$11,846.12 were earned from

Alan Burke Productions, Inc., and that New York State personal income tax of \$720.50 was withheld.

2. The Income Tax Bureau issued a Statement of Audit Changes on which it contended that Alan Burke Productions, Inc. paid petitioner David B. Fein wages of \$12,923.04, and that it withheld \$687.30 in New York State personal income tax. The Income Tax Bureau's information as to the amount of wages which were paid and tax which was withheld was determined from figures supplied by Alan Burke Productions, Inc. to the New York State Withholding Tax Unit. Accordingly, on November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners for \$139.51 in personal income tax, plus \$21.88 in interest, for a total of \$161.39.

3. Petitioner David B. Fein contended that his employer had "moved"; therefore, he was unable to secure a wage and tax statement. He did not submit any documentary or other satisfactory evidence to show that his wages from Alan Burke Productions, Inc. or the tax withheld were in the amounts which he claimed.

#### CONCLUSIONS OF LAW

A. That petitioners, David B. and Nancy L. Fein, have failed to sustain the burden of proof which is imposed by section 689(e) of the Tax Law, and which requires them to show that the wage income which they reported, and the credit for tax withheld which they claimed on their 1970 return, were correct.

B. That the petition of David B. and Nancy L. Fein is denied and the Notice of Deficiency of November 26, 1973 is sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER