

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR LASKY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~and Period(s)~~ 1971 :  
and 1972.

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 6th day of April , 1979 , ~~she~~ served the within  
Notice of Decision by (certified) mail upon Arthur Lasky  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Arthur Lasky  
39-33 222nd Street  
Bayside, New York 11361  
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

6th day of April , 1979.

Marilyn J. Papmear

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

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Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ 1971 :  
and 1972.

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 6th day of April , 1979 , she served the within  
Notice of Decision by (certified) mail upon Robert E. Levine, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Robert E. Levine, CPA  
5120 Glenwood Road  
Brooklyn, NY 11234  
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 April , 1979.

Marilyn J. Papmian

John Huhn



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 6, 1979

Arthur Lasky  
39-33 222nd Street  
Bayside, New York 11361

Dear Mr. Lasky:

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 Chrywaty  
Hearing Examiner

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	:	
ARTHUR LASKY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1971 and	:	
1972.	:	

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Petitioner, Arthur Lasky, 39-33 222nd Street, Bayside, New York 11361, 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 1971 and 1972 (File No. 12194).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1977 at 9:15 A.M. Petitioner appeared with Robert E. Levine, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner is entitled to claim two children as dependents during 1971 and 1972.

FINDINGS OF FACT

1. Petitioner, Arthur Lasky, and his wife, Sondra Lasky, filed New York State combined income tax resident returns for 1971 and 1972.

2. A Consent Extending the Period of Limitation to April 15, 1976 was obtained for 1971, in accordance with section 683(c)(2) of the Tax Law.

3. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner wherein:

- (a) An adjustment in accordance with section 659 of the Tax Law was made for 1972, which was conceded and, therefore, is not at issue.
- (b) Two dependency exemptions were denied for 1971 and 1972.

4. On his 1971 and 1972 New York State income tax return, petitioner claimed exemptions for "Alan" and "Annette", two children from his wife's earlier marriage. Petitioner's wife had custody of the two children and received child support payments from her former husband.

5. In accordance with their regular audit procedures, the Income Tax Bureau examined the tax returns of Sondra Lasky's former husband, who had also claimed exemptions for the two children. The examination revealed checks in the sum of \$3,050.00 for 1971 and \$3,897.00 for 1972, the majority of which were payable to Sondra Lasky. The former spouse contended that these amounts represented his contribution toward the total support of Alan and Annette, despite the fact that he was required to provide only \$45.00 a week for support of the two children. Accordingly, the Income Tax Bureau allowed him the exemptions and denied them to petitioner and his wife. However, due to petitioner's petition for a redetermination, the final disposition of the case pertaining to Sondra Lasky's former husband was held in abeyance.

6. Petitioner and his wife disputed the amounts shown by her former husband and contended that he only contributed approximately \$1,170.00 for the support of each child. They also contended that the excess amount shown by Sondra Lasky's former husband represented money owed to petitioner's wife by her brother. A sworn statement was submitted from her brother stating that in 1972, he gave Sondra Lasky's former husband approximately \$1,600.00 to be forwarded to petitioner's wife.

7. Petitioner and his wife submitted a schedule of support for each child for 1971 and 1972. Said schedule of support consisted of estimated items with very little supporting documentary evidence.

CONCLUSIONS OF LAW

A. That petitioner, Arthur Lasky, and his wife, Sondra Lasky, as the parent having custody of the children, did not clearly establish that they contributed more for the support of the children during the calendar years 1971 and 1972 than did Sondra Lasky's former husband (the parent not having custody), as required in accordance with section 152(e)(2)(B) of the Internal Revenue Code and section 689(e) of the Tax Law.

B. That the petition of Arthur Lasky is denied and the Notice of Deficiency issued September 29, 1975 in the sum of \$513.48 is sustained, together with such additional interest as may be lawfully owing.

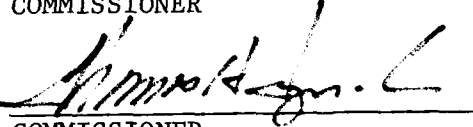
DATED: Albany, New York

April 6, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER