

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Earl L. Lemelle :

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 1972. :

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 Earl L. Lemelle, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Earl L. Lemelle

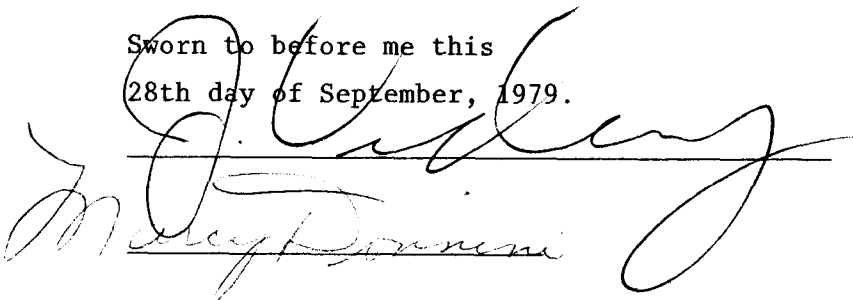
112-11 179th St.

St. Albans, NY 11433

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.



Mary J. Downey

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Earl L. Lemelle
112-11 179th St.
St. Albans, NY 11433

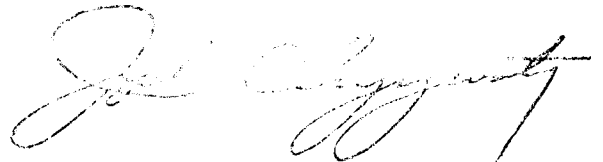
Dear Mr. Lemelle:

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 dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EARL L. LE MELLE : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1972. :
:

Petitioner, Earl L. LeMelle, 112-11 179th Street, St. Albans, New York 11433, 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. 14075).

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 July 10, 1978 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner is entitled to claim a dependency exemption for his daughter, who resided with his former wife.

FINDINGS OF FACT

1. Petitioner, Earl L. LeMelle, timely filed a New York State income tax resident return for 1972, on which he deducted \$3,360.00 in alimony payments and claimed Andrea LeMelle and Cheryl LeMelle as two dependents.

2. The Income Tax Bureau issued a Notice of Deficiency to petitioner dated February 24, 1976, on the grounds that \$1,680.00 of the \$3,360.00 deducted as alimony payments were child support payments and were, therefore, not deductible. Petitioner conceded this finding and submitted a counter-claim for the allowance of an additional dependency exemption of Lia LeMelle, petitioner's daughter.

3. The Income Tax Bureau reviewed the New York State income tax resident return for 1972 filed by Doris C. LeMelle, petitioner's former wife, and found that she had claimed two exemptions, which the Bureau assumed represented herself and Lia LeMelle. No evidence was submitted to indicate that the Income Tax Bureau complied with its regular audit procedures by examining the tax return of Doris LeMelle, and by requesting that she clearly establish that she provided more for the support of Lia LeMelle than did petitioner, Earl L. LeMelle.

4. Petitioner contended that in addition to the alimony and child support payments made to his former wife, he paid the real estate taxes on the home in which she lived.

5. During 1972, Doris C. LeMelle, petitioner's former wife, had custody of Andrea, Cheryl and Lia LeMelle.

CONCLUSIONS OF LAW

A. That petitioner, Earl L. LeMelle, is entitled to a dependency exemption for his daughter Lia LeMelle, under section 152(e) (2) (B) of the Internal Revenue Code (as then in effect) and under section 616 of the New York State Tax Law, since he provided \$1,200.00 or more for the support of the children, and since no evidence was introduced clearly establishing that his former wife (who had custody of the children) provided more for the support of each child than did petitioner. (Section 152(e) (2) (B) of the Internal Revenue Code was amended by P.L. 94-455, to require that the noncustodial parent provide \$1,200.00 or more for each child, if there is more than one child. The change was effective for taxable years beginning after October 4, 1976.)

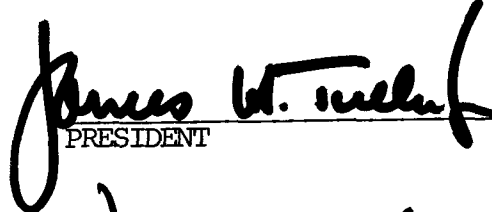
B. That the petition of Earl L. LeMelle is granted to the extent that an additional dependency exemption is allowed for his daughter Lia LeMelle.


C. 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 is in all other respects denied.

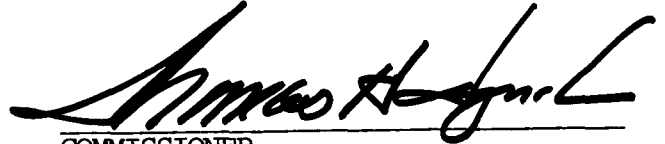
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER