

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Dolores A. Siwula :

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 1973. :

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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Dolores A. Siwula, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dolores A. Siwula
739 Amherst St.
Buffalo, NY 14216

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
17th day of August, 1979.

Victoria Kerry

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :

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for the Year 1973. :

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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Harry R. Chambers the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Harry R. Chambers
3090 Bailey St.
Buffalo, NY 14215

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
17th day of August, 1979.

Victoria Gary

Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Dolores A. Siwula
739 Amherst St.
Buffalo, NY 14216

Dear Ms. Siwula:

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 "John J. Sollecito".

cc: Petitioner's Representative
Harry R. Chambers
3090 Bailey St.
Buffalo, NY 14215
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DOLORES A. SIWULA : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973. :
:

Petitioner, Dolores A. Siwula, 739 Amherst Street, Buffalo, New York 14216, 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 1973 (File No. 14604).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 54 Court Street, Buffalo, New York, on July 20, 1978 at 2:45 P.M. Petitioner appeared pro se and with her accountant, Harry R. Chambers. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner was entitled to claim a resident tax credit for income taxes imposed on lottery winnings by the Commonwealth of Pennsylvania.

II. Whether a New York State resident is subject to personal income tax on intangible personal property (lottery winnings) derived from or connected with sources outside New York State.

FINDINGS OF FACT

1. Petitioner, Dolores A. Siwula, timely filed a New York State Income Tax Resident Return (Form IT-201) for 1973.

2. On November 25, 1974, the Income Tax Bureau received an amended income tax return from petitioner, requesting a refund of \$341.00. Said return showed a claim for a resident tax credit for taxes paid to the Commonwealth of Pennsylvania in the same amount.

3. Petitioner had completed a Claim for Resident Tax Credit (Form IT-112R) and attached it to her 1973 amended return. Said claim stated the type and portion of income (lottery winnings of \$14,850.00) taxable in the other jurisdiction (Pennsylvania), as well as the amount reported on the New York return. The amounts reported as total income on the claim were the basis for computing the limitation of the credit allowable under sections 620(b)(1) and (2) of the Tax Law.

4. On May 6, 1975, the Income Tax Bureau mailed a Waiver of Statutory Notification of Claim Disallowance (Form IT-50.2), on which petitioner was advised that "the resident tax credit is not allowed for tax imposed by another jurisdiction upon income from intangibles, except where such income is from property employed in a business, trade or profession carried on in the other jurisdiction...." Petitioner refused to sign said waiver and on July 28, 1975, the Income Tax Bureau issued a Notice of Disallowance (Form IT-50.3), advising petitioner that her claim was disallowed in full.

5. On May 10, 1976, petitioner filed a Petition for Redetermination of a Deficiency or for Refund of Personal Income Tax (Form IT-95) for 1973, in which she claimed that she was entitled to a resident tax credit because New York State had taxed her lottery winnings.

CONCLUSIONS OF LAW

A. That petitioner is not entitled to a resident credit since section 620(c) of the Tax Law and 20 NYCRR 121.3(d) provide that said credit is allowable only for income tax imposed by another jurisdiction upon a) compensation for personal services performed in the other jurisdiction, b) income from a business, trade or profession carried on in said jurisdiction, and c) income from real or tangible personal property situated in the other jurisdiction. The credit is not allowed for tax imposed by another jurisdiction upon income from intangibles.

B. That a New York State resident is subject to New York State personal income tax on income from intangible personal property (including lottery winnings) derived from or connected with sources outside New York State, in accordance with section 611(a) of the Tax Law and 20 NYCRR 115.1.

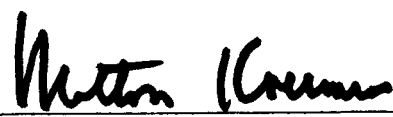
C. That the petition of Dolores A. Siwula is denied and the Notice of Disallowance issued July 28, 1975 is sustained.

DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

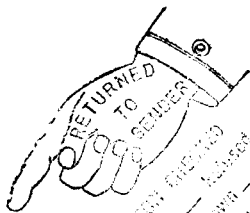

PRESIDENT


COMMISSIONER


COMMISSIONER

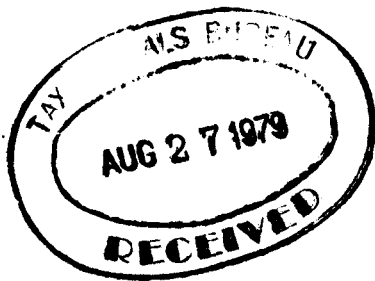
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STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



REASON RETURNED
Undelivered _____
Addressed unknown _____
Insufficient address _____
No such street _____
No such office in state _____
Do not return in this envelope

Harry R. Chambers
3090 Bailey St.
Buffalo, NY 14215



Moved not found
1137E

CERTIFIED

MAILED

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

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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,



cc: Petitioner's Representative
Harry R. Chambers
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Taxing Bureau's Representative

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B. That a New York State resident is subject to New York State personal income tax on income from intangible personal property (including lottery winnings) derived from or connected with sources outside New York State, in accordance with section 611(a) of the Tax Law and 20 NYCRR 115.1.

C. That the petition of Dolores A. Siwula is denied and the Notice of Disallowance issued July 28, 1975 is sustained.

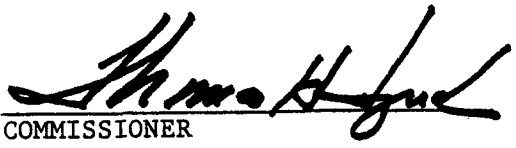
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER