

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Virginia A. Coakley :

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 19th day of September, 1980, he served the within notice of Decision by certified mail upon Virginia A. Coakley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Virginia A. Coakley
53 Vine Rd.
Larchmont, NY 10538

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

19th day of September, 1980.




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

September 19, 1980

Virginia A. Coakley
53 Vine Rd.
Larchmont, NY 10538

Dear Ms. Coakley:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
VIRGINIA A. COAKLEY	:	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, Virginia A. Coakley, 53 Vine Road, Larchmont, New York 10538, 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. 17825).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 19, 1980 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether payments of \$16,000.00, received by petitioner during 1973, pursuant to a decree of divorce, constitute fully taxable alimony income.

FINDINGS OF FACT

1. Petitioner, Virginia A. Coakley, timely filed a New York State Income Tax Resident Return for the year 1973 wherein she reported alimony income of \$15,000.00.

2. On February 28, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that she received \$16,000.00 of alimony income. Accordingly, a Notice of Deficiency was issued against petitioner under the same date asserting additional personal income tax of \$90.00, plus interest of \$19.40, for a total due of \$109.40.

3. Petitioner argued that although she received periodic payments of \$16,000.00 during the year at issue from her former husband, John P. Coakley, \$1,000.00 of said amount was nontaxable to her pursuant to her decree of divorce.

4. Pursuant to the terms of the decree of divorce issued by the Supreme Court, State of New York, petitioner is to receive alimony in the annual amount of \$15,000.00, to be paid in equal monthly installments of \$1,250.00 commencing November 1, 1970. Additionally, said decree further provided that;

Plaintiff shall, in addition to the foregoing, pay to defendant (Virginia A. Coakley) each year, during the lifetime of the plaintiff and until the death or remarriage of defendant, commencing with the 1971 calendar year, the sum of \$1,000.00 which shall be free of all taxes.

5. John P. Coakley deducted \$16,000.00 on his 1973 tax return as alimony payments to petitioner.

CONCLUSIONS OF LAW

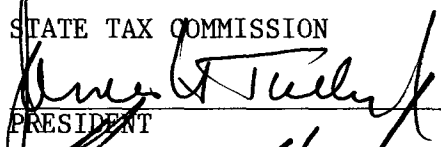
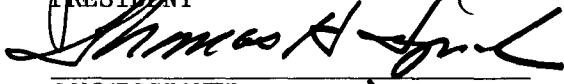
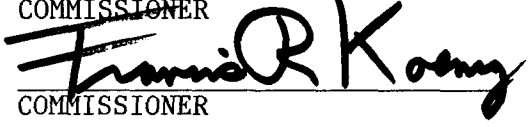
A. That the Supreme Court State of New York is without authority to determine the taxability of payments awarded to petitioner.

B. That the entire \$16,000.00 received by petitioner, Virginia A. Coakley, during the year 1973, pursuant to the terms of the governing divorce decree, is fully taxable alimony income within the meaning and intent of section 71(a)(1) of the Internal Revenue Code and Article 22 of the Tax Law.

C. That the petition of Virginia A. Coakley is denied and the Notice of Deficiency dated February 28, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER