

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John J. Lynch :  
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 1968. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon John J. Lynch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John J. Lynch  
3 Georgia Ln.  
Plainview, NY 11803

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  
22nd day of February, 1980.

Joanne Krapp

J. Vredenburg

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

February 22, 1980

John J. Lynch  
3 Georgia Ln.  
Plainview, NY 11803

Dear Mr. Lynch:

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

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In the Matter of the Petition :

of :

JOHN J. LYNCH :

DECISION

for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the :  
Tax Law for the Year 1968. :

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Petitioner, John J. Lynch, 3 Georgia Lane, Plainview, New York 11803, 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 1968 (File No. 12223).

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 September 19, 1978 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether petitioner filed a New York State personal income tax resident return for 1968.

#### FINDINGS OF FACT

1. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency on the grounds that petitioner failed to file a New York State Income Tax Resident Return for 1968. Petitioner's New York tax liability was based on the corrected Federal taxable income as a result of an audit conducted by the Internal Revenue Service. In addition, a penalty was imposed pursuant to section 685(a) of the Tax Law.

2. Petitioner and the Income Tax Bureau agreed that disposition of this audit was based on a decision "stipulated by the United States Tax Court".

3. Petitioner contended that he filed a New York State Income Tax Resident Return for 1968 and paid with his personal check, the balance due of \$1,389.00. He further contended that he filed an "amended" New York State Income Tax Resident Return based on Federal audit changes, and paid by personal check, the additional amount due of \$527.00.

4. Petitioner was unable to locate the two cancelled checks for \$1,389.00 and \$527.00, or a bank copy thereof. No substantial evidence was submitted by petitioner to establish that a return was filed for the year at issue, or that the tax due and owing was paid.

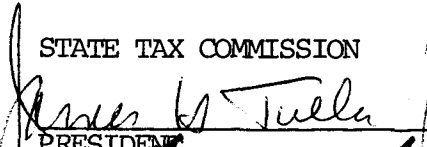
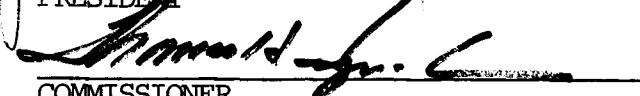
CONCLUSIONS OF LAW

A. That petitioner, John J. Lynch, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that he filed an original and/or an amended New York State Income Tax Resident Return for the year 1968, or that he paid the tax due and owing.

B. That the petition of John J. Lynch is denied and the Notice of Deficiency issued May 19, 1975 in the sum of \$4,621.92 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER

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COMMISSIONER