

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Michael & Helen Montesano :
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. :
_____ :

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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Michael & Helen Montesano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael & Helen Montesano
27 Penhurst Park
Buffalo, NY 14222

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
14th day of March, 1980.

Joanne Knapp

J. Vredenburg

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

March 14, 1980

Michael & Helen Montesano
27 Penhurst Park
Buffalo, NY 14222

Dear Mr. & Mrs. Montesano:

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
MICHAEL MONTESANO and HELEN MONTESANO
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1973.

DECISION

Petitioners, Michael Montesano and Helen Montesano, 27 Penhurst Park, Buffalo, New York 14222, 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. 17378).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on May 16, 1978 at 1:15 P.M. Petitioner Michael Montesano appeared pro se and for his wife, petitioner Helen Montesano. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners filed a New York State income tax return and paid New York State personal income tax for 1973.

FINDINGS OF FACT

1. On December 20, 1976, the Audit Division issued a Notice of Deficiency asserting tax of \$4,545.23, plus penalties and interest, against petitioners. This was a result of petitioners' failure to file a 1973 New York State income tax return or to pay any New York income taxes for 1973.

2. The Audit Division based its computations on information received from the Internal Revenue Service regarding petitioners' income.

3. The Audit Division applied a standard deduction and allowed the same number of exemptions which petitioners claimed on their 1973 Federal income tax return.

4. The Audit Division imposed penalties under section 685(a)(1) of the Tax Law for petitioners' failure to file a 1973 income tax return. It also imposed additional penalties under section 685(a)(2) of the Tax Law for petitioners' failure to pay income taxes when due.

5. Petitioners claimed that a 1973 return had been filed, and that any tax due thereon had been paid. This was based on the assumption that their Federal and State tax returns were always prepared and filed simultaneously.

6. Petitioner Michael Montesano had been ill, had moved his offices and had undergone a change in secretarial and bookkeeping staff, all of which made it impossible for him to locate his records; however, he claimed that he could provide all the necessary documents if he were given a period of three weeks, which period was extended to petitioners.

7. Petitioners did not submit any documents after the three weeks allowed to them, nor did they submit documents even six months later, despite communications from the Division requesting same.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law in demonstrating that a 1973 New York State income tax return had been filed, and that taxes were paid in accordance therewith.

B. That petitioners did not file a New York State personal income tax return for 1973, nor did they pay any 1973 personal income tax.

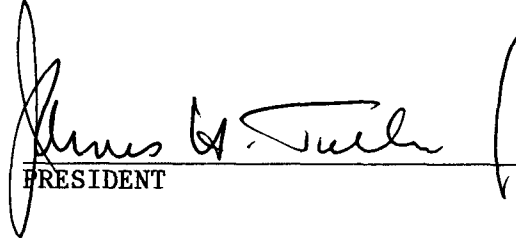
C. That the penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law are proper.

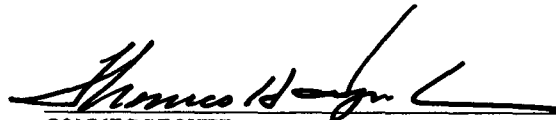
D. That the petition of Michael and Helen Montesano is denied, and the Notice of Deficiency dated December 20, 1976 is sustained.

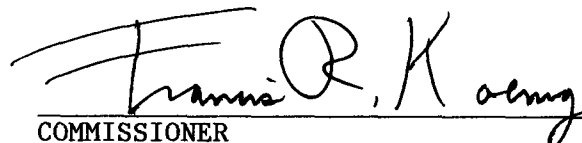
DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER