

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Raymond T. & Marilyn Parker :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 22 & 23 of the Tax Law
for the Year 1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Decision by certified mail upon Raymond T. & Marilyn Parker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raymond T. & Marilyn Parker
9 River St.
Granville, NY 12832

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
29th day of February, 1980.

Joanne Knapp

Joan Schultz

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Raymond T. & Marilyn Parker :

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for the Year 1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Decision by certified mail upon Roger Gelinas 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. Roger Gelinas
170 Village Rd.
So. Orange, NJ 07079

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
29th day of February, 1980.

Joanne Knapp

Jean Schultz

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

February 29, 1980

Raymond T. & Marilyn Parker
9 River St.
Granville, NY 12832

Dear Mr. & Mrs. Parker:

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 & 722 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
Roger Gelinas
170 Village Rd.
So. Orange, NJ 07079
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RAYMOND T. PARKER and MARILYN PARKER
for Redetermination of a Deficiency or
for Refund of Personal Income and
Unincorporated Business Taxes under
Articles 22 and 23 of the Tax Law for
the Year 1972.

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DECISION

Petitioners, Raymond T. Parker and Marilyn Parker, 9 River Street, Granville, New York 12832, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1972 (File No. 15086).

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 December 15, 1978 and on March 7, 1979. Petitioners appeared by Roger Gelinas, Acct. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether business receipts were properly adjusted.

FINDINGS OF FACT

1. Petitioners, Raymond T. Parker and Marilyn Parker, timely filed a New York State Income Tax Resident Return for 1972 on which a negative taxable income was reported. Petitioner Raymond T. Parker did not file an unincorporated business tax return for 1972.

2. In September, 1973, the Internal Revenue Service issued "Income Tax Audit Changes" (Forms 4549), for 1972 increasing the taxable income shown on petitioners' Federal income tax return by \$14,708.09. Petitioners consented

to the adjustments and signed said form.

3. Petitioners contended that subsequent to the Federal audit they filed an "amended" Federal income tax return for 1972. An "amended" New York State Income Tax Resident Return was not filed for 1972.

4. On February 6, 1975, the Internal Revenue Service issued another "Income Tax Audit Changes", wherein the original adjustment of \$14,708.09 was reduced by \$1,391.00, resulting in adjusted taxable income of \$13,792.00. Petitioners contended that they did not agree with the findings, but accepted them since they could not afford to appeal the matter.

5. On August 12, 1975, petitioners filed a "Notice of Change in Taxable Income by U.S. Treasury Department" (Form IT-115) with the New York State Income Tax Bureau on which they reported Federal adjustments of \$10,714.00. Petitioners did not submit payment for the taxes shown due on the IT-115.

6. On March 29, 1976, the Audit Division issued a Notice of Deficiency asserting personal income and unincorporated business taxes based on the Internal Revenue Service audit report of February 6, 1975. In addition, a penalty was imposed pursuant to Section 685(b) of the Tax Law.

7. Petitioner Raymond T. Parker was the sole proprietor of a bar-restaurant, doing business under the name and style of "Our Place". Federal Schedule C as filed for 1972, reported a net operating loss of \$2,183.61, computed as follows:

Gross Receipts	\$32,055.72
Cost of goods sold	<u>25,543.23</u>
Gross profit	6,512.49
Less Business Expenses	<u>8,696.10</u>
Net Loss	(\$ 2,183.61)

8. The final Federal audit changes of February 6, 1975 increased gross receipts by \$5,074.62 which is the sole item in dispute. All other adjustments were conceded to and are not at issue.

9. Petitioners' primary argument was that the Internal Revenue Service made errors in the cash flow analysis, which was the basis for increasing

gross receipts. Petitioners maintained that the IRS audit did not reveal or take into account some of the cash sources such as children's wages deposited back in their savings account or money received from petitioner Raymond T. Parker's father, which were included in petitioners' total bank deposits. No documentary evidence was submitted which established the source of deposits made in petitioners' checking and savings accounts.

10. Petitioners submitted a variety of schedules and photocopies of bank statements which they contended established that the \$5,074.62 increase in gross receipts was erroneous. However, these schedules, which were prepared by petitioners' representative, were submitted without appropriate supporting documentary evidence. The books and records of the business "Our Place" were not submitted into evidence.

CONCLUSIONS OF LAW

A. That petitioners, Raymond T. Parker and Marilyn Parker, have failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that the Federal audit adjustments were improper, erroneous or inaccurate.

B. That the petition of Raymond T. Parker and Marilyn Parker is denied and the Notice of Deficiency issued March 29, 1976 in the sum of \$1,181.74 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

FEB 29 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER