

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Lewis & Mary Sitterly :

AFFIDAVIT OF MAILING

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 Years 1971 & 1972. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Lewis & Mary Sitterly, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lewis & Mary Sitterly  
14 Butternut Dr.  
Pittsford, NY 14534

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  
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Lewis & Mary Sitterly :  
for Redetermination of a Deficiency or a Revision :  
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Personal Income & UBT :  
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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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Sydney R. Rubin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

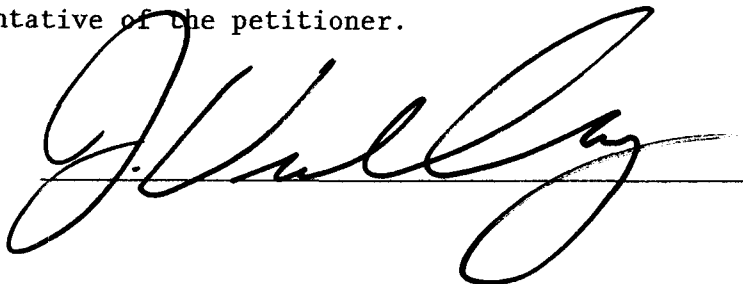
Mr. Sydney R. Rubin  
950 Crossroads Blg.  
Rochester, NY 14614

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  
23rd day of May, 1980.

Joanne Knapp



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

May 23, 1980

Lewis & Mary Sitterly  
14 Butternut Dr.  
Pittsford, NY 14534

Dear Mr. & Mrs. Sitterly:

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  
Sydney R. Rubin  
950 Crossroads Bldg.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|----------|
| In the Matter of the Petitions         | : |          |
| of                                     | : |          |
| LEWIS SITTERLY and MARY SITTERLY       | : | DECISION |
| for Redetermination of Deficiencies or | : |          |
| for Refund of Personal Income and      | : |          |
| Unincorporated Business Taxes under    | : |          |
| Articles 22 and 23 of the Tax Law for  | : |          |
| the Years 1971 and 1972.               | : |          |

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Petitioners, Lewis Sitterly and Mary Sitterly, 14 Butternut Drive, Pittsford, New York 14534, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1971 and 1972 (File No. 13418).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 16, 1979 at 2:45 P.M. Petitioner Mary Sitterly appeared with Sydney R. Rubin, Esq. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly determined petitioners' tax liability as a result of a field audit.

FINDINGS OF FACT

1. Petitioners, Lewis Sitterly and Mary Sitterly, timely filed New York State income tax resident returns (Form IT-201) and petitioner Lewis Sitterly filed New York State unincorporated business tax returns (Form IT-202) for 1971 and 1972.

2. Petitioner Lewis Sitterly was in the auto repair business and did business under the name and style of Monroe Brake & Motor Service at 183 Charlotte Street, Rochester, New York.

3. On January 27, 1975, based on a field audit, the Income Tax Bureau issued two notices of deficiency. One notice was issued against petitioners, Lewis Sitterly and Mary Sitterly, asserting additional personal income taxes of \$806.29, plus penalties of \$85.82 [pursuant to sections 685(b) and (c) of the Tax Law] and interest of \$123.51, for a total of \$1,015.67. The other notice was issued against petitioner Lewis Sitterly asserting additional unincorporated business taxes of \$512.53, plus penalties of \$25.63 [pursuant to section 685(b) of the Tax Law] and interest of \$80.03, for a total due of \$618.19.

4. The Income Tax Bureau examined the books and records of petitioner Lewis Sitterly in accordance with established audit procedures and techniques. It utilized the source and application of funds method of reconstructing income, along with an analysis of petitioners' living expenses. The Bureau determined that there were discrepancies of \$6,509.55 and \$3,818.69 for 1971 and 1972, respectively.

5. At the hearing, petitioners contended that they had in excess of \$10,500.00 in cash in a nickle slot machine located in their home. They contended that the money was an accumulation of gambling winnings over a period of approximately 20 years. Petitioners stated that they did not reveal previously the source of the cash because of the means by which it was procured.

6. Petitioners argued that there was no evidence that any additional income was derived from an unincorporated business. Therefore, they reasoned that the unincorporated business tax should be cancelled in its entirety.

#### CONCLUSIONS OF LAW

A. That petitioners, Lewis Sitterly and Mary Sitterly, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law which requires them to

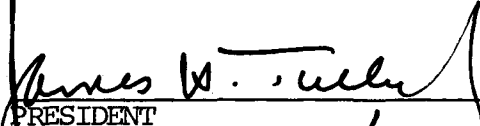
establish that the notices of deficiency issued on January 27, 1975 were erroneous, arbitrary or capricious.

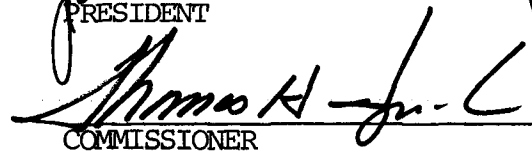
B. That the petitions of Lewis Sitterly and Mary Sitterly are denied and the notices of deficiency issued on January 27, 1975 are sustained, together with such additional interest and penalties as may be lawfully owing.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
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Lewis & Mary Sitterly  
96 Macintosh Rd.  
Ontario, NY

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  
20th day of June, 1980.

Deborah A. Bank

J. Vredenburg