

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Otto Spamer :

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 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Otto Spamer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Otto Spamer
75 Payson Ave.
New York, NY 10034

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.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of

Otto Spamer

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of a Determination or a Refund of
Personal Income Tax :
under Article 22 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Samuel Uretsky 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. Samuel Uretsky
45 N. Village Ave.
Rockville Centre, NY 11570

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
20th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 20, 1980

Otto Spamer
75 Payson Ave.
New York, NY 10034

Dear Mr. Spamer:

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
Samuel Uretsky
45 N. Village Ave.
Rockville Centre, NY 11570
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
OTTO SPAMER
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1971 and 1972.

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DECISION

Petitioner, Otto Spamer, 75 Payson Avenue, New York, New York 10034, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 12407).

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 September 18, 1979 at 9:15 A.M. Petitioner appeared by Samuel Uretsky, CPA. The Income Tax Bureau appeared by Ralph Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner, Otto Spamer, is entitled to an offsetting credit against the deficiency as the result of overpayments of tax for the years 1970 and 1971.

FINDINGS OF FACT

1. Petitioner, Otto Spamer, filed New York State combined income tax returns with his wife for the years 1971 and 1972. Additionally, he filed New York State unincorporated business tax returns for said years.

2. On October 7, 1974, the Income Tax Bureau issued a Statement of Audit Changes wherein the Bureau disallowed a business loss for the year 1972 in the

amount of \$8,814.00. Furthermore, an adjustment was made for an addition, reported on petitioner's unincorporated business tax return for the year 1971 in the amount of \$3,141.60, which was not reported on his personal income tax return for said year. Accordingly, a Notice of Deficiency was issued on March 31, 1975 asserting additional tax of \$1,827.42, penalty of \$224.37 and interest of \$281.98, for a total due of \$2,333.77.

3. Petitioner does not contest the adjustments as set forth above, but contends that he is entitled to apply an overpayment of his 1970 tax in the amount of \$2,331.00 against the deficiency at issue.

4. On November 19, 1976, petitioner signed a Withdrawal of Petition and Discontinuance of Case as the result of a pre-hearing conference. Said withdrawal indicated an additional tax liability of \$1,991.00 which was computed on the basis of the initial adjustments, plus an adjustment of \$905.00 determined as the result of a subsequent Federal audit for the year 1971. This withdrawal, although signed by petitioner, was contingent on the application of the 1970 overpayment to the liability computed. This conditional withdrawal was ultimately rejected by the Audit Division on the basis that credit for the 1970 overpayment can only be given to the extent of \$139.74, since the overpayment initially computed must be reduced by interest, and penalties imposed under sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law. The first two penalties were imposed since petitioner did not file his 1970 return until October 6, 1972.

5. Petitioner's 1971 return, which was filed on October 17, 1972, indicated a balance due in the amount of \$11,764.71. On filing of said return, petitioner submitted payment of \$14,470.57, resulting in an overpayment of \$2,705.86. The Income Tax Bureau computed the net overpayment to be \$2,349.13, after the application of penalty and interest due to late filing. During the hearing, the Income Tax Bureau did not produce any documentation which would indicate that this overpayment was previously refunded to petitioner.

CONCLUSIONS OF LAW

A. That the adjustments made per Statement of Audit Changes dated October 7, 1974 are uncontested, and as such, are sustained.

B. That the Federal audit adjustment incorporated into the rejected Withdrawal of Petition and Discontinuance of Case dated November 19, 1976 is sustained.

C. That credit is allowed against the deficiency at issue in the amount of \$139.74, which represents petitioner's 1970 overpayment, properly reduced by interest and penalties imposed.

D. That the Audit Division is directed to ascertain whether the overpayment of \$2,349.13 for 1971 was issued and received by petitioner. That a credit would be allowed against the deficiency if the Audit Division determines that the overpayment was not received by petitioner.

E. That the petition of Otto Spamer is granted to the extent provided in Conclusions of Law "C" and "D" (supra); and that, except as provided, is in all other respects denied.


F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated March 31, 1975 to be consistent with the "Conclusions of Law" determined herein.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER