

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Ronald Totaro

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 Year 1974. :

State of New York
County of Albany

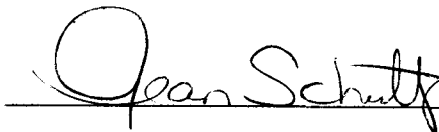
Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Decision by certified mail upon Ronald Totaro, the petitioner in the within proceeding,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

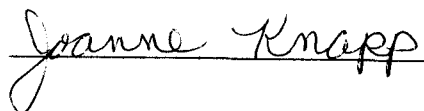
Ronald Totaro
1017 East Quaker Rd.
East Aurora, NY 14052

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.





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

February 29, 1980

Ronald Totaro
1017 East Quaker Rd.
East Aurora, NY 14052

Dear Mr. Totaro:

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
RONALD N. TOTARO
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1974.

DECISION

Petitioner, Ronald N. Totaro, 1017 East Quaker Road, East Aurora, New York 14052, 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 1974 (File No. 20627).

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 September 18, 1978 at 3:30 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether Ronald N. Totaro's petition for redetermination was filed timely.

FINDINGS OF FACT

1. On October 27, 1975, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Deficiency in the amount of \$3,768.25 sent by regular mail to petitioner, Ronald N. Totaro. Said Notice of Deficiency clearly stated that petitioner had 90 days in which to file a petition to contest said determination, otherwise it would become an assessment.

2. An identical Notice of Deficiency was issued to petitioner's wife Adrienne Totaro. On or about January 26, 1976, a petition on her behalf was received by the State Tax Commission.

3. Petitioner alleges to have prepared petitions for himself and for his wife, and to have arranged for the execution and mailing thereof, in one envelope.

4. The envelope which was mailed in Albany, New York, and which was received by the State Tax Commission allegedly contained only the petition of petitioner's wife. The envelope was delivered by certified mail (return receipt requested), on which postage of 58 cents was placed to cover the cost of the first class letter, the certification and the return receipt.

5. Petitioner alleges that the typing and the mailing of the petition was done in his office; however, the envelope clearly bears the name of A. K. Totaro, petitioner's wife, and her home address as the return address on the envelope.

6. Petitioner filed a petition on November 10, 1977 and a perfected petition on April 5, 1978, all after appearing at a pre-hearing conference. At this conference, petitioner alleges to have first learned that the State Tax Commission had not received his alleged petition of January 26, 1976.

7. A judgment for \$4,115.23 was entered against petitioner by the State Tax Commission on May 21, 1977, based on the Notice of Deficiency.

8. Petitioner filed an obligee bond of \$5,000.00 with the State Tax Commission and vacated the aforesaid judgment, which bond is to be released or paid to the State Tax Commission after and depending on the decision in this matter.

CONCLUSIONS OF LAW

A. That petitioner bears the burden of proof in establishing the timeliness of the filing of his petition (section 689(e) of the Tax Law).

B. That petitioner had until January 26, 1976 (since the 90th day was a Sunday) to file a petition for redetermination of the Notice of Deficiency which was dated October 27, 1975 (section 689(b) of the Tax Law).

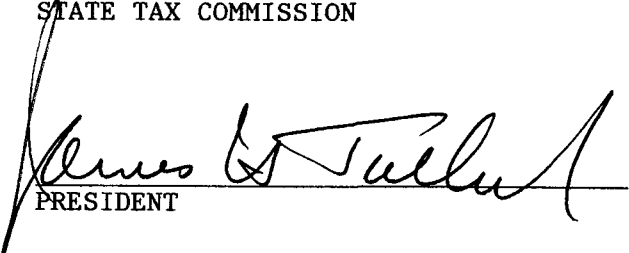
C. That petitioner has failed to sustain his burden of proof in showing that his petition was enclosed in the envelope which contained the petition of A. K. Totaro, and which bore her return address.

D. That the petition of Ronald N. Totaro was not filed timely and is, therefore, in all respects denied.

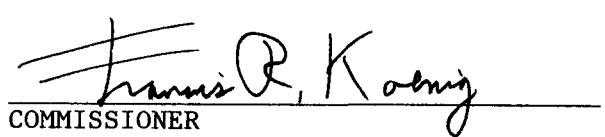
DATED: Albany, New York

FEB 29 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER