

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael R. & Betty Boccacino :

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 1972 - 1974. :

State of New York  
County of Albany

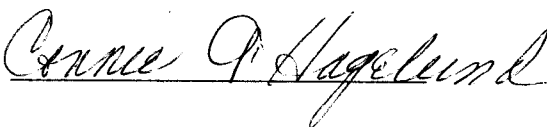
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of March, 1981, he served the within notice of Decision by certified mail upon Michael R. & Betty Boccacino, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

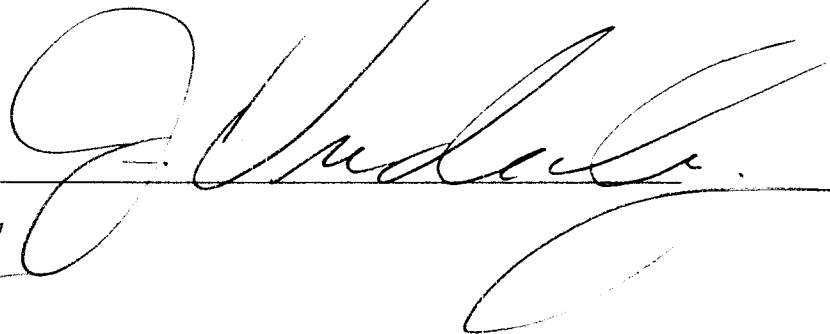
Michael R. & Betty Boccacino  
29 Alger Dr.  
Rochester, NY 14624

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  
6th day of March, 1981.

  
\_\_\_\_\_  
Connie P. Hagelund

  
\_\_\_\_\_  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael R. & Betty Boccacino :

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 1972 - 1974. :

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 6th day of March, 1981, he served the within notice of Decision by certified mail upon Thomas A. Ferraro 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. Thomas A. Ferraro  
1354 Buffalo Rd.  
Rochester, NY 14624

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  
6th day of March, 1981.

*Anne P. Hagelund*

*J. Vredenburg*

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

March 6, 1981

Michael R. & Betty Boccacino  
29 Alger Dr.  
Rochester, NY 14624

Dear Mr. & Mrs. Boccacino:

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  
Thomas A. Ferraro  
1354 Buffalo Rd.  
Rochester, NY 14624  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
MICHAEL R. BOCCACINO and BETTY BOCCACINO  
for Redetermination of Deficiencies or  
for Refund of Personal Income Tax and  
Unincorporated Business Tax under Articles  
22 and 23 of the Tax Law for the Years  
1972, 1973 and 1974.

---

DECISION

Petitioners, Michael R. Boccacino and Betty Boccacino, 29 Alger Drive, Rochester, New York 14624, filed a petition for redetermination of deficiencies or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 of the Tax Law for the years 1972, 1973 and 1974 (File No. 15582).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 14, 1980 at 1:15 P.M. Petitioners appeared by Thomas A. Ferraro, Public Accountant. The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether certain deductions taken by petitioner in 1973 were proper.

FINDINGS OF FACT

1. On March 17, 1976, pursuant to audit, the Audit Division issued a statement of audit changes against Michael R. Boccacino and Betty Boccacino finding additional personal income taxes due for the years 1973 and 1974. A penalty pursuant to section 685(b) and 685(c) of the Tax Law was imposed for the years 1973 and 1974. A penalty pursuant to section 685(c) of the Tax Law was imposed for the year 1972. A Notice of Deficiency for said years was

issued on April 12, 1976 in the amount of \$4,763.79, plus penalty of \$354.96 and interest of \$694.04, for a total of \$5,812.52.

2. On March 17, 1976, pursuant to audit, the Audit Division issued a Statement of Audit Changes against Michael R. Boccacino finding additional unincorporated business tax due for the years 1973 and 1974. A penalty pursuant to section 685(b) of the Tax Law was imposed for the years 1973 and 1974. A Notice of Deficiency for said years was issued on April 12, 1976 in the amount of \$1,872.43, plus penalty of \$93.62 and interest.

3. Petitioner, Michael R. Boccacino, is a plumbing and heating contractor. To test the accuracy of books maintained by him, in an audit of his business, a statement of net worth was prepared which revealed certain discrepancies. Through 1972 it was petitioners' practice to increase business expenses at the end of the year by payments at that time. The business was on a cash basis. Two checks, one of which was dated January 1, 1973 for \$22,368.86 and the other dated January 1, 1974 for \$5,399.67, were deducted as expenses in 1973. The January 1, 1973 check was numbered 6393 and the January 1, 1974 check was numbered 6391. Both cleared in 1974. The 1973 check was admittedly in error as to the year stated. Petitioner deducted these expenses in 1973 on both his Federal and State returns. The Federal audit for 1973 accepted petitioners' returns as filed. State audit denied that these deductions belonged in 1973. Credit for these deductions were allowed in the audit for 1974.

4. Petitioner did not contest the audit findings with respect to the years 1972, 1973 and 1974, only the reconciliation for December, 1973 with respect to the two checks cited in Finding of Fact "3" supra.

#### CONCLUSIONS OF LAW

A. That Treasury Regulation Section 1.461-1 (General Rule for Taxable Year of Deduction) provides that under the cash receipts and disbursement

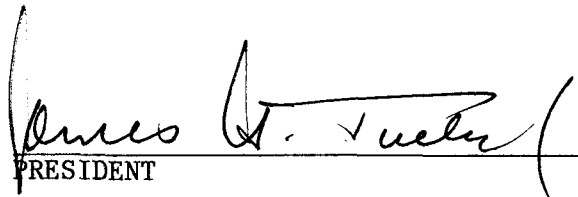
method of accounting, amounts representing allowable deductions shall, as a general rule, be taken into account for the taxable year in which paid. Therefore, the two checks for \$22,368.86 and \$5,399.67 which were paid in 1974 are to be taken into account in 1974.

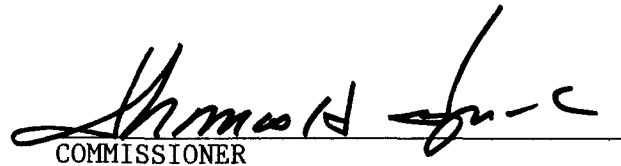
B. That the petition of Michael R. Boccacino and Betty Boccacino is denied and the notices of deficiency issued on April 12, 1976 are sustained.

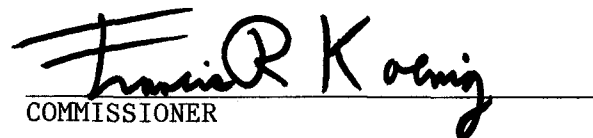
DATED: Albany, New York

MAR 06 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER