

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert M. & Judith A. Clark :

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 1976. :

AFFIDAVIT OF MAILING

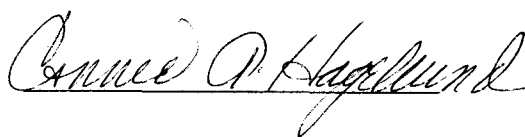
State of New York
County of Albany

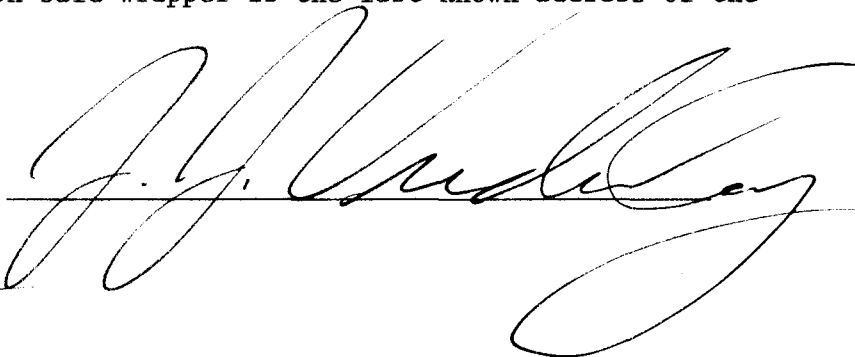
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of March, 1981, he served the within notice of Decision by certified mail upon Robert M. & Judith A. Clark, the petitioner in the within proceeding,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

Robert M. & Judith A. Clark
RR #1
Arkport, NY 14807
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.


Anne D. Haglund


Jay Vredenburg

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

March 6, 1981

Robert M. & Judith A. Clark
RR #1
Arkport, NY 14807

Dear Mr. & Mrs. Clark:

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	:	
ROBERT M. and JUDITH A. CLARK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

Petitioner, Robert M. Clark and Judith A. Clark, RD #1, Arkport, New York 14807, 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 1976 (File No. 20824).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Binghamton, New York on May 9, 1979 at 11:00 A.M. Petitioner Robert M. Clark appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division was correct in estimating petitioners' taxable income, when petitioners failed to file a return as required.

FINDINGS OF FACT

1. On September 26, 1977, the Audit Division issued a Notice of Deficiency against petitioners in the amount of \$933.62 plus interest of \$35.65 for a total of \$969.27.

2. Petitioners filed a State Income Tax Return for 1976 on April 1, 1977. The return was incomplete. In columns where the petitioner was to compute their tax, they inserted asterisks. The only figures on the return

were \$1,635.50 for the State tax withheld, for overpayment and for amount to be refunded. Attached to the return were pages numbered 1 to 50 as an explanation to the return. The paper included copies of affidavits and copies of the Declaration of Independence and the entire United States Constitution, and its amendments, the United States Code and various other documents.

3. At the hearing, petitioners submitted what was called an "amended return" for 1976. This consisted of thirty-nine pages of excerpts from newspaper clipping, citations, the United States Constitution and its amendments, the Declaration of Independence and a letter of explanation using the fifth amendment. Said "amended return" was submitted with a copy of petitioners' personal check allegedly to be in full payment of the additional tax due shown on the "amended return". The claimed remittance bore no State deposit serial number and appeared not to have been cancelled by petitioners bank.

4. The Audit Division computed the State tax due from petitioners, starting with wages as shown on wage and tax statements submitted with the original filing, allowing four exemptions (based on correspondence), the standard deduction and the tax withheld.

CONCLUSIONS OF LAW

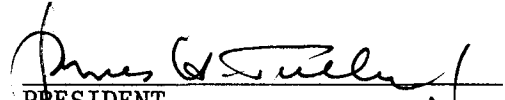
A. That section 681(a) of the Tax Law provides that "if a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer." In as much as petitioners failed to file their return as required, the estimation was proper.

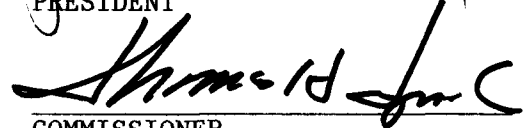
B. That the petition of Robert M. Clark and Judith A. Clark is denied and the Notice of Deficiency issued on September 26, 1977 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 06 1981


PRESIDENT


COMMISSIONER


COMMISSIONER