

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Jerome & Eleanor Cook :

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 thru 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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Jerome & Eleanor Cook, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome & Eleanor Cook
29 Ridge Castle Rd.
Rochester, NY 14622

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 February, 1981.

Connie A. Hagelund

J. Vredenburg

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

February 20, 1981

Jerome & Eleanor Cook
29 Ridge Castle Rd.
Rochester, NY 14622

Dear Mr. & Mrs. Cook:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEROME COOK AND ELEANOR COOK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Years 1971 through 1974.	:	

Petitioners, Jerome Cook and Eleanor Cook, 29 Ridge Castle Road, Rochester, New York 14622, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1971 through 1974 (File Nos. 19052 and 19053).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, on July 26, 1979 at 2:45 P.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether the taxable income of petitioners was properly determined upon audit for the years in issue.

FINDINGS OF FACT

1. On February 28, 1977, the Audit Division, pursuant to an audit, issued statements of audit changes and notices of deficiency against petitioners as follows:

a) For the years 1971, 1972, 1973 and 1974, indicating additional unincorporated business taxes against both petitioners in the amount of \$12,227.32, plus penalty of \$611.35, and interest of \$2,418.07, for a total of \$15,256.74.

b) For the years 1972 and 1973, indicating additional personal income taxes against both petitioners in the amount of \$7,346.89, plus penalty of \$367.35, and interest of \$1,799.62, for a total of \$9,513.86.

c) For the year 1974, indicating additional personal income tax against Jerome Cook in the amount of \$7,459.45, plus penalty of \$372.97, and interest of \$1,188.22, for a total of \$9,020.64.

d) For the year 1974, indicating additional personal income tax against Eleanor Cook in the amount of \$7,459.45, plus penalty of \$372.97, and interest of \$1,188.22, for a total of \$9,020.64.

2. Petitioners operated the Wisconsin Liquor Store in Rochester, New York. The following is the computation of unincorporated business tax by the Audit Division for the years in issue:

TAX COMPUTATION SCHEDULE - UBT - PARTNERSHIP

	<u>1974</u>	<u>1973</u>	<u>1972</u>	<u>1971</u>
Net adjustment per audit	\$130,321.64	\$116,171.94	\$77,622.48	\$325,622.86
Taxable business income				
previously stated (Loss)	(23,003.00)	(28,959.24)	(49,838.60)	(337,983.94)
Corrected taxable				
business income	107,318.64	87,212.70	27,783.88	(12,361.08)
Tax at 5-1/2%	5,902.52	4,796.69	1,528.11	- 0 -
Less business tax credit	- 0 -	- 0 -	- 0 -	- 0 -
Corrected unincorporated				
business tax due	5,902.52	4,796.69	1,528.11	- 0 -
Unincorporated business				
tax previously computed	- 0 -	- 0 -	- 0 -	- 0 -
Deficiency	5,902.52	4,796.69	1,528.11	- 0 -

3. Petitioners filed partnership returns for the years 1972 and 1973.

The following is the computation by the Audit Division and adjustments thereto which indicated additional personal income tax due:

TAX COMPUTATION SCHEDULE

Tax Year or Period Ended	1972	1973
Type of Return	IT-201	IT-201
PERSONAL INCOME		
Net adjustment per audit	\$ 91,880.15	\$131,821.24
Taxable income previously stated (Loss)	(61,878.58)	(90,781.56)
Corrected taxable income	30,001.57	41,039.68
Tax on corrected taxable income	2,810.24	4,465.95
Surcharge 2-1/2%	70.70	- 0 -
Corrected tax due	2,880.94	4,465.95
Tax previously computed	- 0 -	- 0 -
Deficiency	2,880.94	4,465.95

4. The following is the computation by the Audit Division, and adjustments thereto which indicated additional personal income tax due for the year 1974:

TAX COMPUTATION SCHEDULE

Tax Year or Period Ended	1974	1974
Type of Return	IT-208	IT-208
PERSONAL INCOME	HUSBAND	WIFE
Net adjustment per audit	\$ 73,997.82	\$ 73,997.82
Taxable income previously stated (Loss)	(13,001.50)	(13,001.50)
Corrected taxable income	60,996.32	60,996.32
Tax on corrected taxable income	7,459.45	7,459.45
Tax previously computed	- 0 -	- 0 -
Deficiency	7,459.45	7,459.45

5. A field audit was made upon petitioners in accordance with proper accounting methods based on available records. The Auditor disallowed various unsubstantiated deductions including the following:

a) In 1971, payments made to buy out a partner "Tepper"

Actual payment	\$31,431.84
Per return	\$362,054.70
Disallowed	\$330,622.86

b) In 1972, Rent and real estate taxes disallowed	\$ 87,508.44
Wages and payroll deductions disallowed	3,310.00
c) In 1973, Wages and payroll deductions disallowed	4,828.00
Rent and real estate taxes as per return	434,408.00
Payments actually made	-303,055.00
Rent and real estate taxes disallowed	\$131,353.60
d) In 1974, Rent and real estate taxes per return	\$481,553.64
Payments actually made	-341,300.00
Disallowed	\$140,253.64
Disallowed wages paid to personal maid in 1974	\$ 5,068.00
Disallowed wages paid to personal maid in 1973	\$ 4,828.00

6. Petitioners offered no documentary or other substantial evidence that the audit computations were incorrect.

CONCLUSIONS OF LAW

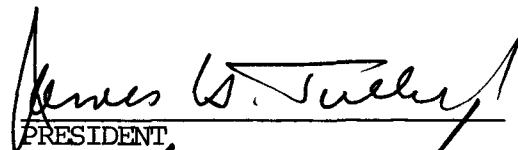
A. That petitioners have not presented evidence to show that the Notices of Deficiencies issued February 28, 1977 were incorrect, and thereby have failed to sustain the burden of proof imposed by Sections 689(e) and 722 of the Tax Law.

B. That the petition of Jerome Cook and Eleanor Cook is denied and the notices of deficiency issued on February 28, 1977 are sustained, together with such additional interest and penalties as may be lawfully owing.

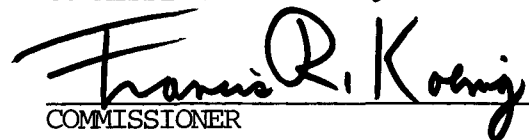
DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER