



STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Samuel A. & Evans J. Crowe :

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 :  
1964 - 1968.

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Harry Fractenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

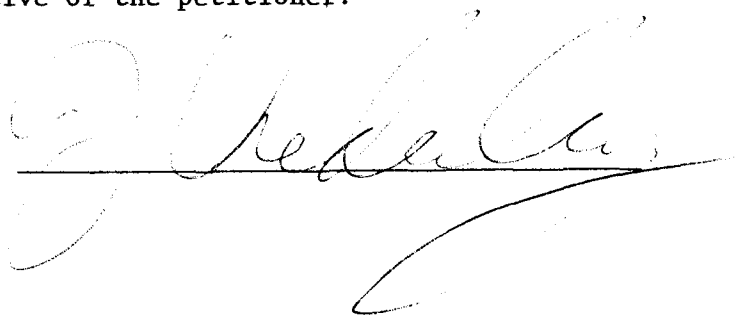
Harry Fractenberg  
325 Broadway  
New York, NY 10007

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  
25th day of September, 1981.





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

September 25, 1981

Samuel A. & Evans J. Crowe  
200 Bagatelle Rd.  
Melville, NY 11746

Dear Mr. & Mrs. Crowe:

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  
Harry Fractenberg  
325 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
SAMUEL A. CROWE and EVANS J. CROWE : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Taxes under Article :  
22 of the Tax Law for the Years 1964 through :  
1968.

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission at Two World Trade Center, New York, New York, on May 18, 1978. Petitioners appeared by Leonard F. Binder, Esq. and Randolph G. Abood, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel). Petitioners are now represented by Harry Fractenberg, Esq. who submitted a supplemental memorandum of law.

III. Whether reasonable cause exists for waiving the penalties imposed.

FINDINGS OF FACT

1. The appellate branch of the Internal Revenue Service issued a final determination against petitioners increasing their reported income for the years 1964 through 1968.

2. Petitioners failed to file a report of federal changes for the years 1964 through 1968 as required by section 659 of the Tax Law.

3. On October 30, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for the years 1964 through 1968 based upon unreported federal changes for said years in the amount of \$27,612.04 including penalties and interest. The Statement of Audit Changes provided, in part, that:

"Since we have no record of a 1964, 1965, and 1966 New York State income tax return having been filed, we have computed your liability based upon your correct Federal taxable income. For the years 1965 and 1966, we have added to your Federal taxable income, the amounts of \$135.90 and \$860.00 which represents State and Local income taxes taken as an (sic) itemized deductions on your Federal income tax returns which are not deductible on your New York returns.

The New York adjustment shown for the year 1967 has been made since you failed to report your income from the Crowe's Funeral Home, Inc.

Penalties have been imposed in accordance with the provisions of the New York State Tax Law."

Accordingly, a Notice of Deficiency was issued against petitioners for the aforesaid years in the amount of \$27,612.04. Petitioners filed a petition with respect to the aforementioned Notice of Deficiency.

4. Petitioners contend that section 683(c)(1)(C) of the Tax Law, which permits the Department of Taxation and Finance to assess a tax at any time where no report of corrected changes is filed, is unconstitutional. They further contend that the Department of Taxation and Finance must establish that returns for the years 1964, 1965 and 1966 were not filed and that the time to issue an assessment against petitioners for the years in issue had expired.

5. Petitioners have filed an affidavit stating that they relied upon their accountants in the proper preparation of their returns. Their contention is that they had reasonable cause in that it was their accountants who caused them to be late and negligent in the filing of their returns.

6. Petitioners' returns were filed as follows:

<u>Year</u>	<u>Due Date</u>	<u>Federal Returns Filed</u>	<u>New York Returns Filed</u>
1964	4/15/65	2/15/67	No record of filing
1965	4/15/66	2/15/67	No record of filing
1966	4/15/67	10/03/67	No record of filing
1967	4/15/68	6/09/69	4/14/69
1968	4/15/69	2/15/70	2/18/70

The Federal returns for 1964 and 1965 do not show a preparer's name, only an address. The 1966 Federal return is signed by a preparer. A letter dated October 3, 1967 and attached to the Federal return states that because of the condition of the corporate books, it was necessary to make a complete analysis of the entire year 1966 before the returns could be completed. The letter further stated that the accountant who had been servicing the firm (petitioners) had left, and the taxpayers had no knowledge of the condition of the corporate records. There is no information as to the identity of this accountant or whether he was the accountant who prepared the Federal returns for 1964 and 1965. The preparer of the 1966 Federal return prepared the 1967 Federal return. Another preparer amended the 1967 Federal return and prepared the 1968 Federal return. A letter dated February 10, 1970, which is attached to the 1968 Federal return, indicates petitioners' records had to be reconstructed in order to prepare the returns. Petitioner states that this was caused by his accountant's negligence and neglect.

CONCLUSIONS OF LAW

A. That the burden of proof in showing that the Notice of Deficiency is erroneous or incorrect is upon petitioners (section 689(e) of the Tax Law).

B. That petitioners have failed to establish that they filed New York State income tax returns for the years 1964, 1965 and 1966.

C. That the Notice of Deficiency was properly issued within the time limitations established by sections 683(c)(1)(A) and (C) of the Tax Law.

D. That based on Finding of Fact "6", supra, reasonable cause did not exist for the waiver of penalties under sections 685(a)(1) and 685(b) of the Tax Law.

E. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the State Tax Commission.

F. That the petition of Samuel A. Crowe and Evans J. Crowe is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER