

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
E. Lance & E. Kay Doxie :  
: 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 :  
1968 & 1969. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon E. Lance & E. Kay Doxie, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

E. Lance & E. Kay Doxie  
RD 2 Box 655  
Greene, NY 13778

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  
14th day of August, 1981.

*Annice D. Hagelund*

*Jay Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax under Article 22 of the Tax Law for the Years :  
1968 & 1969. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Frank J. Filetto the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank J. Filetto  
East River Rd.  
Greene, NY 13778

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  
14th day of August, 1981.

*Annice A. Haglund*

*Jay Vredenburg*

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

August 14, 1981

E. Lance & E. Kay Doxie  
RD 2 Box 655  
Greene, NY 13778

Dear Mr. & Mrs. Doxie:

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  
Frank J. Filetto  
East River Rd.  
Greene, NY 13778  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
E. LANCE DOXIE and E. KAY DOXIE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law for the Years 1968 and 1969.	:	

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Petitioners, E. Lance and E. Kay Doxie, RD 2 Box 655, Greene, New York 13778 filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969 (File No. 16314).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York on September 14, 1979 at 9:15 A.M. Petitioner E. Lance Doxie appeared with Frank J. Filetto, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Particia L. Brunbough, Esq. of counsel).

ISSUE

Whether the Notice of Deficiency issued against petitioners for the years 1968 and 1969 was timely.

FINDINGS OF FACT

1. Petitioners, E. Lance and E. Kay Doxie, timely filed New York State personal income tax returns for 1968 and 1969.
2. Petitioners did not sign a Consent Fixing Period of Limitation upon assessment of Personal Income Taxes.
3. On September 24, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1968 and 1969, imposing additional personal

income tax of \$5,047.29, plus interest of \$1,103.86, for a total of \$6,151.15. The notice was issued on the grounds that pursuant to a field audit of a partnership (New Born Truck and Equipment Company) petitioner E. Lance Doxie's distributive share of the partnership had been increased by \$17,348.13 and \$29,229.30 for 1968 and 1969 respectively.

4. On June 16, 1976 a conference was held between the Audit Division and petitioner E. Lance Doxie. Based on this conference the Audit Division issued a letter dated July 27, 1976 whereby it cancelled the deficiency for 1968 and reduced the discrepancy to \$16,797.00 and the additional personal income tax due to \$2,277.66 for 1969.

5. On January 18, 1972 and March 19, 1973 the Income Tax Bureau obtained consents fixing period of limitation upon assessments of Personal Income Tax from the petitioners' ex-partner John P. Grant pursuant to a field audit of a dissolved partnership (New Born Truck and Equipment Company).

6. The petitioner, E. Lance Doxie contended that he was not bound by the consents obtained by the Income Tax Bureau from his ex-partner John P. Grant, extending the three years Statute of Limitation so as to enable the Income Tax Bureau to assess a tax deficiency. He argued that the Notice of Deficiency and the assessment were issued against him beyond the three year statutory period.

7. At the hearing, the petitioner E. Lance Doxie introduced no new evidence which would reduce his distributive share of the partnership (New Born Truck and Equipment Company).

8. The New York adjusted gross income reported on the petitioners 1969 return was \$13,936.29.

CONCLUSIONS OF LAW

A. That Section 683 of the Tax Law provides:

"General.---Except as otherwise provided in this section, any tax under this article shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed)."

\* \* \*

(d) Omission of income on return. ---The tax may be assessed at any time within six years after the return was filed if---

(1) an individual omits from his New York adjusted gross income an amount properly includible therein which is in excess of twenty-five percent of the amount of New York adjusted gross income stated in the return, or

B. That Section 658(c) of the Tax Law states in part:

"Partnerships. Every partnership having a resident partner or having any income derived from New York sources,... shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the tax commission may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year.... For purposes of this subsection, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under this article."

C. That petitioner E. Lance Doxie, should have reported an additional \$16,797.00 in partnership (New Born Truck and Equipment Company) income and that such amount is in excess of twenty-five per cent of the gross income reported on the petitioners' personal income tax return for 1969. That the Notice of Deficiency issued against petitioners on September 24, 1973 for the year 1969 was issued within six years of the date that petitioners' 1969 New York State income tax resident return was required to be filed. Therefore, the Notice of Deficiency was timely issued and any tax determined to be due by the Tax Commission could be assessed and collected in accordance with the meaning and intent of sections 683(d) and (e) of the Tax Law.

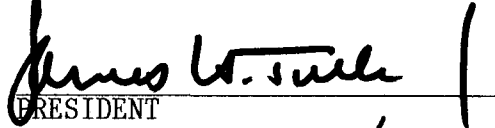
D. That the Audit Division is hereby directed to modify the Notice of Deficiency to that extent determined in Finding of Fact "4".

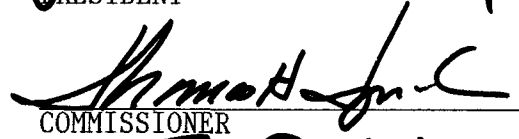
E. That the petition of E. Lance and E. Kay Doxie is granted to the extent indicated in Conclusion of Law "D" and that, except as so granted, is in all other respects denied.

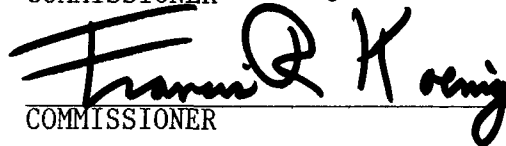
DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER