

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Dawson & Rose Dunn :

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 Year 1972. :

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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Dawson & Rose Dunn, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dawson & Rose Dunn
345 E. Seneca St.
Sherrill, NY 13461

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
9th day of January, 1981.

Conrad P. Hagelund

[Signature]

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

January 9, 1981

Dawson & Rose Dunn
345 E. Seneca St.
Sherrill, NY 13461

Dear Mr. & Mrs. Dunn:

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 :
DAWSON DUNN and ROSE DUNN : 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 Year 1972. :

Petitioners, Dawson Dunn and Rose Dunn, 345 E. Seneca Street, Sherrill, New York 13461, 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 year 1972 (File Nos. 12027 and 12028).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on May 12, 1980 at 1:15 P.M. Petitioner Dawson Dunn appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly determined petitioners' tax liability for 1972 as a result of a field audit.

FINDINGS OF FACT

1. Petitioners, Dawson Dunn and Rose Dunn, timely filed a New York State Income Tax Resident Return for 1972. Petitioner Dawson Dunn did not file a New York State Unincorporated Business Tax Return for said year.

2. Petitioner owned and operated the Deacon's Restaurant in Oneida, New York until December 1973, at which time he went out of business.

3. On July 28, 1975, based on a field audit, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1972 asserting additional personal income tax of \$410.06, plus penalty pursuant to section 685(b) of the Tax Law of \$20.51, and interest of \$29.01, for a total due of \$459.58. On that same date, the Income Tax Bureau issued a Notice of Deficiency against petitioner Dawson Dunn for 1972, imposing unincorporated business tax of \$289.38, plus penalties pursuant to sections 685(a)(1) and (2) and 685(b) of \$120.09, and interest of \$49.11, for a total due of \$458.88. These deficiencies were based on the Income Tax Bureau's utilization of net worth method of reconstructing income, along with a bank analysis and cost of living analysis. The Income Tax Bureau conducted a net worth audit, in accordance with established audit procedures and techniques, because petitioner had burned all his books and records, including bank statements, cancelled checks, cash register tapes, invoices, etc. At the initial interview pursuant to the audit, petitioner Dawson Dunn stated that the cash on hand at the beginning of the audit period was \$500.00. Based on this audit, the Income Tax Bureau found petitioners had unreported income of \$9,017.85.

4. At the hearing, petitioner Dawson Dunn contended that he had three to five thousand dollars in a safe at home which was an accumulation of earnings over the years. He contended that he did not previously reveal the amount of cash because it was not the Bureau's business. Petitioner Dawson Dunn offered no documentary evidence to support his contentions.

CONCLUSIONS OF LAW

A. That petitioners, Dawson Dunn and Rose Dunn, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law which requires them to establish that the notices of deficiency issued on July 28, 1975 were erroneous, arbitrary or capricious.

B. That the petition of Dawson Dunn and Rose Dunn is denied and the notices issued July 28, 1975 are sustained, together with such additional interest and penalties as may be lawfully owing.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER