

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Tibor & Klara Kron :

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 1971,1972. :

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 16th day of January, 1981, he served the within notice of Decision by certified mail upon Tibor & Klara Kron, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tibor & Klara Kron  
611 West 232nd St.  
Bronx, NY 10463

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  
16th day of January, 1981.

*Cornelius G. Hagelund*

*Jay Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Tibor & Klara Kron :

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Personal Income & UBT :  
under Article 22&23 of the Tax Law  
for the Years 1971,1972. :

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 16th day of January, 1981, he served the within notice of Decision by certified mail upon Richard Minton the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Richard Minton  
200 East 42nd St.  
New York, NY 10017

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  
16th day of January, 1981.

*Conni R. Hagelund*

*Jay Vredenburg*

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

January 16, 1981

Tibor & Klara Kron  
611 West 232nd St.  
Bronx, NY 10463

Dear Mr. Kron:

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  
Richard Minton  
200 East 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
TIBOR KRON and KLARA KRON	:	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 and 1972.	:	

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Petitioners, Tibor Kron and Klara Kron, 611 West 232nd Street, Bronx, New York 10463, 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 and 1972 (File No. 15602).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 31, 1978 at 12:10 P.M. Petitioner appeared by Richard Minton, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners are liable for a 50 percent fraud penalty under section 685(e) of the Tax Law for intentional as opposed to honest failure to report certain business income discovered on audit of their tax returns for the years 1971 and 1972.

FINDINGS OF FACT

1. Petitioners, Tibor Kron and Klara Kron, timely filed a New York State income tax resident return and a New York State Unincorporated Business Tax Return for the years 1971 and 1972.

2. On April 12, 1976, the Audit Division issued two notices of deficiency against petitioners, Tibor and Klara Kron, for additional personal income tax and for unincorporated business tax due in the following amounts:

(a) For 1971, additional personal income tax of \$3,689.00, plus penalty and interest of \$2,728.38, for a total of \$6,417.38; additional unincorporated business tax of \$1,454.57, plus penalty and interest of \$1,075.80, for a total of \$2,530.37.

(b) For 1972, additional personal income tax and unincorporated business tax of \$4,569.59, plus penalty and interest of \$3,310.11, for a total of \$7,879.70.

The deficiencies were issued when an audit revealed a discrepancy of several thousand dollars between income as reported on petitioners' tax returns, and income as shown from examination and reconstruction of petitioners' bank deposits and gross figures derived from petitioners' business sales expenses.

3. Petitioner Tibor Kron, born in Hungary, and his wife, petitioner Klara Kron, born in Czechoslovakia, arrived in the United States in the late 1950's when they were of mature years. Their education, command of English, and business sophistication are still relatively limited. Neither petitioner was educated beyond the grade school level.

4. Petitioner Tibor Kron was apprenticed to a plumber shortly after his arrival in the United States. Sometime thereafter, he started his own business of handyman/plumber. The only records Mr. Kron kept during the course of his business were copies of the bills he furnished his customers. These bills were prepared with the assistance of his wife.

5. When petitioners received a check from a customer during the period herein involved, they would note the payment on the copy of the bill they had

retained. Each quarter, petitioner Klara Kron prepared a sales tax return from the copies of the bills retained for that quarter. At the end of each year, she provided her accountant with gross figures on sales and expenses derived from these quarterly returns.

6. Petitioner Tibor Kron was paid only by check during the period herein involved. All such checks were deposited directly in petitioner's checking account.

7. Neither petitioner ever compared their billings to deposits in their checking account. Upon audit a discrepancy of several thousand dollars developed between gross figures for sales and expenses derived from bills and such figures derived from bank deposits. Petitioners' methods of recording billings and payments were neither sophisticated nor precise.

8. The unrecorded income described in Finding of Fact "7" in petitioners' checking account was due to the honestly mistaken omission of some payments for billings, which omissions stemmed from petitioners' lack of bookkeeping knowledge and business sophistication.

9. Subsequent to issuance of the notices of deficiency an agreement was reached between petitioners and the Audit Division, whereby the Division allowed reductions in petitioners' taxable income totalling \$9,800.00 for 1971, and \$14,226.00 for 1972. Petitioners, in turn, have conceded tax liability on the additional income discovered by the audit, subject to recomputation in accordance with the above allowed reductions in taxable income for each of the years in question.

10. Petitioner Tibor Kron had a limited credit account with a supply house from which he obtained some of his business supplies.

11. In order not to exceed his credit limit with said supply house, petitioner was occasionally required to make checks out to cash. These checks

were delivered to the president of the supply house to cover petitioner's purchases. The president of the supply house endorsed these checks in his own name and cashed them at his bank.

12. The Audit Division asserted that on the basis of a tax audit of the said supply house and of its president, petitioner's checks were cashed as a check-cashing service to petitioner; therefore, it asserted a fraud penalty on the alleged proceeds to petitioners from the checks cashed.

13. The president of the said supply house cashed petitioner's checks as a credit-limit accommodation for petitioner's actual purchase of business supplies, returning no cash from such checks to either petitioner.

14. The affidavit of the president of the said supply house, contrary to Finding of Fact "12", is overcome by petitioner Tibor Kron's sworn testimony at the hearing.

15. The Audit Division has failed to establish by a preponderance of the credible evidence that the checks described in Findings of Fact "11" and "13" were check-cashing accommodations to petitioner, and not payments of business expenses incurred by him.

#### CONCLUSIONS OF LAW

A. That the failure of petitioners to disclose certain business income earned during 1971 and 1972 was the result of an honest mistake and was not made with the intent to commit fraud.

B. That petitioners did not engage in any fraud.

C. That the Audit Division has failed, under section 689(e) of the Tax Law, to meet its burden of proof in establishing that petitioners were guilty of fraud with intent to evade tax.

D. That the Audit Division is directed to recompute the Notice of Deficiency in accordance with the allowed reductions in taxable income of \$9,800.00 for

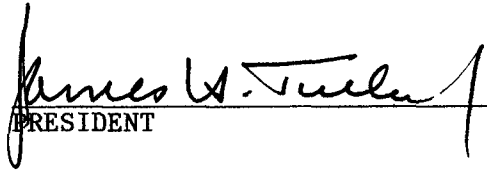
1971 and \$14,226.00 for 1972 as stated in Finding of Fact "9".

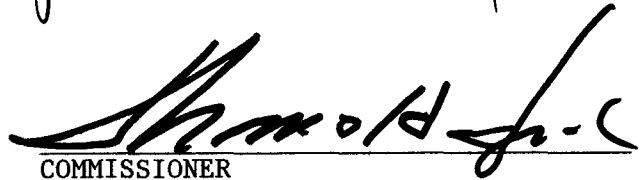
E. That the petition of Tibor Kron and Klara Kron is granted insofar as it relates to the asserted fraud penalties and the said fraud penalties are cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 16 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER