

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
William H. Reid :  
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

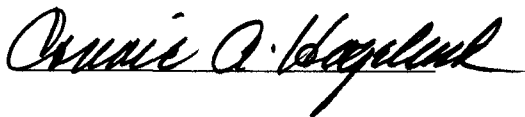
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of October, 1981, he served the within notice of Decision by certified mail upon William H. Reid, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

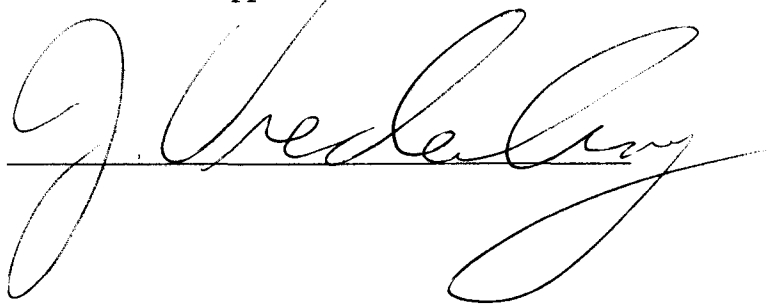
William H. Reid  
17 Park Ave., Apt. 4C  
New York, NY 10016

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  
23rd day of October, 1981.





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

October 23, 1981

William H. Reid  
17 Park Ave., Apt. 4C  
New York, NY 10016

Dear Mr. Reid:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WILLIAM H. REID	:	DECISION
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.	:	

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Petitioner, William H. Reid, 17 Park Avenue, Apt. 4C, New York, New York 10016, 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. 20298).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 28, 1981 at 9:15 a.m. Petitioner William H. Reid appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner's 1968 and 1969 New York State personal income tax liabilities have been properly recomputed based on adjustments made as the result of an Internal Revenue Service audit of petitioner's 1968 and 1969 U.S. Individual Income Tax Returns.

FINDINGS OF FACT

1. Petitioner, William Reid, timely filed New York State resident income tax returns for the years 1968 and 1969. The 1968 return claimed New York itemized deductions of \$2,346.00, while the 1969 return claimed the standard deduction of \$1,000.00.

2. On June 27, 1977 the Audit Division issued against petitioner a Notice of Deficiency asserting that additional personal income tax of \$2,036.87 was due for the years 1968 and 1969, together with penalty (5% negligence asserted pursuant to section 685(b) of the Tax Law) and interest. Said notice was based on an explanatory Statement of Audit Changes, originally dated October 17, 1975, wherein adjustments were made "...to conform with the audit of your [petitioner's] Federal Income Tax Returns by the Internal Revenue Service and the memorandum decision rendered by the U.S. Tax Court". Reported New York taxable income for 1968 was increased by \$6,946.00, while 1969 reported taxable income was increased by \$15,000.00.

3. Petitioner's 1968 and 1969 U.S. Individual Income Tax Returns were audited by the Internal Revenue Service and the following adjustments were proposed:

<u>ITEM</u>	<u>1968</u>	<u>1969</u>
Disallowed Casualty Loss	\$1,850.00	\$ -0-
Increase In Gross Receipts		
from Real Estate Business	<u>7,388.00</u>	<u>34,861.16</u>
Total Adjustments	<u>\$9,238.00</u>	<u>\$34,861.16</u>

4. Petitioner appealed to the United States Tax Court the findings of the Commissioner of the Internal Revenue Service (William H. Reid v. Commissioner, 33 TCM 800) and the Tax Court found that "Petitioner received additional taxable income from his real estate business in the amounts of \$5,600.00 and \$15,000.00 during 1968 and 1969, respectively...". An appeal was brought by petitioner to the U.S. Court of Appeals, Second Circuit (William H. Reid, Appellant v. Commissioner of Internal Revenue, Appellee, 75-2 USTC § 9727)

where the Tax Court decision was affirmed without separate opinion.

5. As a result of the aforementioned Tax Court decision, petitioner's 1968 Federal taxable income was increased by \$7,450.00 (\$1,850.00 + \$5,600.00) and 1969 Federal taxable income was increased by \$15,000.00. The difference in the increase in taxable income for the year 1968 for Federal purposes (\$7,450.00) and for New York State purposes (\$6,946.00) is due to the fact that with the disallowance of the \$1,850.00 casualty loss, allowable New York itemized deductions were \$504.00 less than the \$1,000.00 maximum standard deduction. Accordingly, the Audit Division, in their computations, allowed petitioner the maximum standard deduction and reduced the Federal adjustment to taxable income by \$504.00 to arrive at a New York State adjustment of \$6,946.00.

6. The 5 percent negligence penalty assessed against petitioner pursuant to section 685(b) of the Tax Law was based on a corresponding 5 percent negligence penalty asserted against petitioner by the Internal Revenue Service in accordance with section 6653(a) of the Internal Revenue Code. The U.S. Tax Court, in its decision, sustained the imposition of the section 6653(a) addition to tax.

7. At the hearing held herein petitioner offered no documentary evidence or credible oral testimony which refuted the accuracy of the findings of the Tax Court.

#### CONCLUSIONS OF LAW

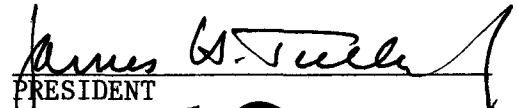
A. That petitioner, William H. Reid, has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the adjustments made to his 1968 and 1969 Federal income tax returns, as a result of a decision of the U.S. Tax Court, were erroneous, inaccurate or incorrect.

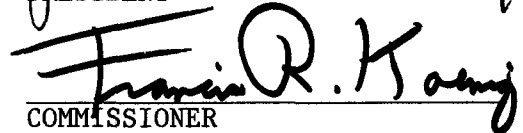
B. That the petition of William H. Reid is denied and the Notice of Deficiency issued June 27, 1977 is sustained, together with such additional interest as may be lawfully due and owing.

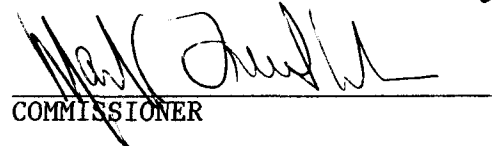
DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER