

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
J. Leland & Helene A. Rickard :  
: 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 Year 1971

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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 3rd day of April, 1981, he served the within notice of Decision by certified mail upon J. Leland & Helene A. Rickard, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Leland & Helene A. Rickard  
RD 2, Box 415  
Williams Street  
Kirkwood, NY 13795

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  
3rd day of April, 1981.

Conne C. Hagelund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
J. Leland & Helene A. Rickard :  
: 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 Year 1971 :

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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 3rd day of April, 1981, he served the within notice of Decision by certified mail upon James J. McKeown 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. James J. McKeown  
505 Press Bldg.  
Binghamton, NY 13901

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  
3rd day of April, 1981.

*Conrad A. Hagelund*

*[Signature]*

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

April 3, 1981

J. Leland & Helene A. Rickard  
RD 2, Box 415  
Williams Street  
Kirkwood, NY 13795

Dear Mr. & Mrs. Rickard:

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  
James J. McKeown  
505 Press Bldg.  
Binghamton, NY 13901  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
HELENE A. RICKARD : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1971. :

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Petitioner, Helene A. Rickard, R.D. No. 2, Box 415, Williams Street, Kirkwood, New York 13795, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 13380).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Binghamton, New York, on May 10, 1979 at 1:15 P.M. Petitioner appeared by James J. McKeown, CPA. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was an "innocent spouse" and thus not liable for personal income tax for the year 1971.

FINDINGS OF FACT

1. The Income Tax Bureau received information from a Federal/State computer tape match indicating that for the year 1971, J. Leland and Helene A. Rickard had filed a joint Federal income tax return showing Federal adjusted gross income of \$40,805.76. Since there was no record of a State return being filed for the year 1971, on February 20, 1974 the Bureau issued a Statement of Audit Changes against Mr. and Mrs. Rickard using the Federal information as a basis for computation.

On September 30, 1974, a Notice of Deficiency was issued against J. Leland and Helene A. Rickard in the amount of \$3,855.81, plus penalties under section 685(a) (1) and (a) (2) of the Tax Law in the amount of \$1,445.93 and interest of \$568.58, for a total of \$5,870.32.

A penalty under section 685(i) of the Tax Law was also imposed against J. Leland Richard, in the amount of \$950.00. A warrant for the penalty was filed in Broome County on June 7, 1974. The warrant was satisfied on June 20, 1977 by the payment of \$1,164.00 (\$950.00 penalty and \$214.60 interest) following foreclosure action.

2. On December 28, 1974, Helene J. Rickard filed a petition protesting the deficiency on the grounds that she had no income for the period in question. She did not file said petition on behalf of her husband J. Leland Rickard. J. Leland Rickard did not file a petition.

3. J. Leland Rickard, an attorney, died on May 11, 1975. His estate was insolvent.

4. Petitioner Helene J. Rickard had no income of her own during the year 1971. She was not employed, did not perform any services and did not earn any compensation. She had no interest or investment income. She had no knowledge of her husband's business affairs. All of her expenses were met through her husband's income.

5. The perfected petition filed herein claims that petitioner is not liable for the payment of any tax for the year 1971 by virtue of section 6013 of the Internal Revenue Code (the "Innocent Spouse" provision).

CONCLUSIONS OF LAW

A. That if a resident husband and wife file a joint Federal return:

- (1) They are required to file a joint New York income tax return and their liabilities are joint and several, except as provided in section 651(b) (5) of the Tax Law (the New York "Innocent Spouse" provision) or section 685(e) (fraud penalty); or
- (2) They may elect to file separate returns on the combined form, in which event their tax liabilities are to be separate, except as provided in section 651(b) (4) (regarding withheld taxes and estimated payments) (section 651(b) (2) of the Tax Law).

Since petitioner and her husband did not elect to file separate New York returns, they were required to file a joint New York return.

B. That the New York "Innocent Spouse" provisions, as noted above, are contained in section 651(b) (5) of the Tax Law. These provisions, however, are not applicable unless a joint New York income tax return is filed.

C. That since petitioner and her husband were required to file a joint New York income tax return and since the New York "Innocent Spouse" provisions are inapplicable, petitioner is jointly and severally liable for the tax.

D. That the Income Tax Bureau properly computed the tax based on Federal adjusted gross income as provided for by section 612 of the Tax Law. Petitioner has not sustained the burden of proof established by section 689(e) of the Tax Law to show that the computation is incorrect.

E. That petitioner's failure to file a New York tax return and pay New York income tax was due to reasonable cause and not due to willful neglect; therefore, the penalties imposed under section 685(a) (1) and (a) (2) of the Tax Law are cancelled insofar as they apply to petitioner.

F. That the petition of Helene A. Rickard is granted to the extent shown in Conclusion of Law "E" supra; and that, except as so granted, the Notice of Deficiency is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

\_\_\_\_\_  
PRESIDENT

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COMMISSIONER

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COMMISSIONER

F. That the petition of Helene A. Rickard is granted to the extent shown in Conclusion of Law "E" supra; and that, except as so granted, the Notice of Deficiency is sustained.

DATED: Albany, New York

APR 03 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



Kathy Pfaffenbach took re-mail. Remail  
is going to be mailed again with correct  
address.

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

~~J. Leland & Helene A. Rickard  
RD 2, Box 415  
Williams Street  
Kirkwood, NY 13795~~

# COMMITMENT

1675168-000-1

# MAIL

APR 13 1981

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

J. Leland & Helene A. Rickard

:  
:  
: 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 Year :  
1971

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State of New York  
County of Albany

Debbie Montanye, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of May, 1981, she served the within notice of by certified mail upon J. Leland & Helene A. Rickard, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Leland & Helene A. Rickard  
66 Wheeler Street  
Deposit, NY 13754

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  
22nd day of May, 1981.

Debbie Montanye

Anna A. Haglund

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

Remailed: May 22, 1981  
~~April 3, 1981~~

J. Leland & Helene A. Rickard  
66 Wheeler Street  
Deposit, NY 13754

Dear Mr. & Mrs. Rickard:

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  
James J. McKeown  
505 Press Bldg.  
Binghamton, NY 13901  
Taxing Bureau's Representative

REQUEST FOR BETTER ADDRESS

*Fr. De. 121) 4-3*

Requested by <i>[Signature]</i>	Unit Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12217	Date of Request APR 13 1981
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>067-30-0782</i> <i>128-12-8292</i>	Date of Petition <i>74-72-28</i>
Name <i>J. Heland &amp; Helene A. Rickard</i>	
Address <i>RD #2, Box 415</i> <i>Williams Street</i> <i>Arkwood, N.Y. 13795</i>	

## Results of search by Files

<input type="checkbox"/> New address: <i>79</i>	<i>66 WHEELER St</i> <i>Depew N.Y. 13754</i>
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>0-80 scope</i> <i>078#</i> <i>077#</i>

Searched by <i>JMK</i>	Section <i>M.I</i>	Date of Search <i>4-17-81</i> <i>4/15/81</i> <i>uncl. 81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

REQUEST FOR BETTER ADDRESS

Fr. De. (22) 4-3 Requested by <i>J. Hedenburg</i>	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request APR 13 1981
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>067-30-0782</i> <i>128-12-8292</i>	Date of Petition <i>74-12-28</i>
Name <i>J. Heland &amp; Helene A. Rickard</i>	
Address <i>RD #2, Box 415</i> <i>Williams Street</i> <i>Kirkwood, N.Y. 13795</i>	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>0-80 scope</i> <i>078<sup>#</sup></i> <i>677<sup>#</sup></i>

Searched by <i>AMB</i> <i>Dea M. L. L.</i>	Section <i>M.I.</i> <i>W. L. T. L. L.</i>	Date of Search <i>4-17-81</i> <i>4/15/81</i> <i>4-16-81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER