

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Peter Riekstins :  
: 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 1972 & 1973

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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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Peter Riekstins, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter Riekstins  
244 Pelhamdale Ave.  
Pelham, NY 10803

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  
10th day of April, 1981.

*Anne A. Hegeland*

*J. Vredenburg*

2. Petitioner was a general surgeon. He became associated with Wickersham Hospital in the early 1960's, being one of twenty doctors who paid \$5,000.00 each to become owners of the hospital. Petitioner had the right to place his patients in the hospital, operate on them, and treat them.

3. Petitioner was made secretary-treasurer of Wickersham Hospital in or about 1970. He was told by the president of the hospital and by the executive administrator that he would have no responsibility for administration.

4. Petitioner, in his capacity as secretary-treasurer, co-signed checks, the first signature being that of the president of the hospital. Subsequent to 1972, petitioner no longer signed checks. He contended that a rubber stamp bearing a facsimile of his signature may have been used on checks in 1973.

5. With the exception of signing checks, petitioner had no responsibilities at the hospital other than as a medical doctor treating his patients. He maintained no office at the hospital. Petitioner would perform surgery at the hospital, make his rounds in the morning, and return to his office several blocks away for afternoon appointments.

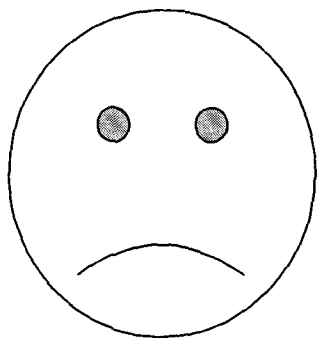
6. Petitioner was European born and educated. It was clear at the formal hearing that he was not comfortable with the English language and that he had no understanding of business matters.

7. Petitioner, unaware and unfamiliar with the business affairs of the hospital, did not know of the plan to close the hospital in 1973.

#### CONCLUSIONS OF LAW

A. That with the exception of signing checks in his capacity as secretary-treasurer, petitioner had no role whatever in the administration or business management of Wickersham Hospital. Accordingly, petitioner was not a person required to collect, truthfully account for and pay over New York State with-

# **CORRECTION FOLLOWS**



## STATE TAX COMMISSION

: AFFIDAVIT OF MAILING

State of New York  
County of Albany

Peter Riekstins  
244 Pelhamdale Ave.  
Pelham, NY 10803

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.

Anne A. Hegeland

forth on said wrapper is the last known address

*J. Van Dyke*

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Peter Riekstins :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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State of New York  
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Peter Riekstins  
244 Pelhamdale Ave.  
Pelham, NY 10803

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  
10th day of April, 1981.

*Anne A. Hegeland*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Peter Riekstins :

: 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 1972 & 1973 :

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Robert H. Law, III 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. Robert H. Law, III  
Law and Morgan  
15 Reservoir Rd.  
White Plains, NY 10603

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  
10th day of April, 1981.

Anna A. Hegelund?

*J. Walker*

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

April 10, 1981

Peter Riekstins  
244 Pelhamdale Ave.  
Pelham, NY 10803

Dear Mr. Riekstins:

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  
Robert H. Law, III  
Law and Morgan  
15 Reservoir Rd.  
White Plains, NY 10603  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
PETER W. RIEKSTINS, M.D. : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1972 and 1973. :

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Petitioner, Peter W. Riekstins, M.D., 244 Pelhamdale Avenue, Pelham, New York 10803, 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 1972 and 1973. (File No. 15006).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on March 25, 1980 at 9:30 A.M. Petitioner appeared by Law & Morgan, Esqs. (Robert H. Law, Esq., of counsel). The Audit Division appeared by Ralph Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Wickersham Hospital during the period February 16, 1972 through May 23, 1973.

FINDINGS OF FACT

1. By Statement of Deficiency and Notice of Deficiency dated April 12, 1976, the Audit Division notified petitioner of a deficiency in the amount of \$75,943.65. The claims against petitioner related to unpaid withholding taxes of Montwill Corp. d/b/a Wickersham Hospital.



2. Petitioner was a general surgeon. He became associated with Wickersham Hospital in the early 1960's, being one of twenty doctors who paid \$5,000.00 each to become owners of the hospital. Petitioner had the right to place his patients in the hospital, operate on them, and treat them.

3. Petitioner was made secretary-treasurer of Wickersham Hospital in or about 1970. He was told by the president of the hospital and by the executive administrator that he would have no responsibility for administration.

4. Petitioner, in his capacity as secretary-treasurer, co-signed checks, the first signature being that of the president of the hospital. Subsequent to 1972, petitioner no longer signed checks. He contended that a rubber stamp bearing a facsimile of his signature may have been used on checks in 1973.

5. With the exception of signing checks, petitioner had no responsibilities at the hospital other than as a medical doctor treating his patients. He maintained no office at the hospital. Petitioner would perform surgery at the hospital, make his rounds in the morning, and return to his office several blocks away for afternoon appointments.

6. Petitioner was European born and educated. It was clear at the formal hearing that he was not comfortable with the English language and that he had no understanding of business matters.

7. Petitioner, unaware and unfamiliar with the business affairs of the hospital, did not know of the plan to close the hospital in 1973.

#### CONCLUSIONS OF LAW

A. That with the exception of signing checks in his capacity as secretary-treasurer, petitioner had no role whatever in the administration or business management of Wickersham Hospital. Accordingly, petitioner was not a person required to collect, truthfully account for and pay over New York State with-

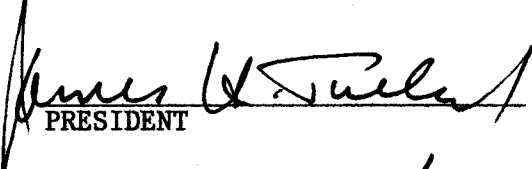
holding taxes due from Wickersham Hospital for the period February 16, 1972 through May 23, 1973, within the meaning of subsections (g) and (n) of section 685 of the Tax Law.

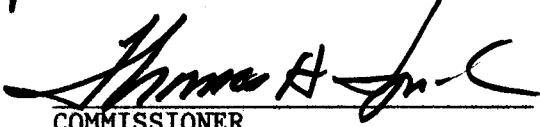
B. That the petition of Peter W. Riekstins, M.D., is granted and the Notice of Deficiency dated April 12, 1976 is cancelled.

DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER