

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Alberto Robertson

:

:

: 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 :
1966, 1968 & 1969

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 17th day of July, 1981, he served the within notice of Decision by certified mail upon Alberto Robertson the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alberto Robertson
84 Pinebrook Rd.
New Rochelle, NY 10801

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
17th day of July, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alberto Robertson :

: 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 :
1966, 1968 & 1969 :

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 17th day of July, 1981, he served the within notice of Decision by certified mail upon Paul Banks the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Banks
5417 15th Ave.
Brooklyn, NY 11219

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
17th day of July, 1981.

Connie A. Dayland

J. Vredenburg

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

July 17, 1981

Alberto Robertson
84 Pinebrook Rd.
New Rochelle, NY 10801

Dear Mr. Robertson:

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
Paul Banks
5417 15th Ave.
Brooklyn, NY 11219
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALBERTO ROBERTSON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1966, 1968	:	
and 1969.	:	

Petitioner, Alberto Robertson, 84 Pinebrook Road, New Rochelle, New York 10801, 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 1966, 1968 and 1969 (File No. 21002).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 29, 1981 at 1:15 P.M. Petitioner appeared by Paul Banks, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioner filed New York State personal income tax returns for the years 1966, 1968 and 1969.

II. Whether the Notice of Deficiency issued against Alberto Robertson for said years was barred by limitations on assessment pursuant to section 683 of the Tax Law.

FINDINGS OF FACT

1. On September 1, 1976, the Audit Division issued a Statement of Audit Changes to petitioner, Alberto Robertson, whereon it alleged that petitioner

failed to file New York State personal income tax returns for the years 1966, 1968 and 1969, and, therefore, determined his tax liability for said years based on unsigned pencil copies of such returns submitted by petitioner on October 25, 1974. Accordingly, a Notice of Deficiency was issued against petitioner on September 26, 1977 asserting personal income tax of \$3,653.21, penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of \$1,540.34, plus interest of \$1,742.39, for a total due of \$6,935.94.

2. Petitioner, a self employed dentist, contended that his returns for the years 1966, 1968 and 1969 were timely filed and that he subsequently paid the balance due for each of said years during 1971.

3. Although the Audit Division conducted several careful file searches under the various social security numbers used by petitioner, original returns were not found.

4. Petitioner offered no documentation to evidence the filing of New York State personal income tax returns for the years at issue or the payment of tax as computed on the copies submitted.

5. Attached to the purported copies of petitioner's 1966, 1968 and 1969 returns were several original New York State wage and tax statements. Such statements were required to be attached to the returns on filing.

6. Petitioner contended that the Notice of Deficiency issued was barred by the Statute of Limitations.

CONCLUSIONS OF LAW

A. That petitioner, Alberto Robertson has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he filed New York State personal income tax returns for the years 1966, 1968 and 1969.

B. That pursuant to section 683(c)(1)(A) of the Tax Law "the tax may be assessed at any time if no return is filed". Accordingly, the Notice of Deficiency issued against petitioner is not barred by limitations on assessment.

C. That the petition of Alberto Robertson is denied and the Notice of Deficiency dated September 26, 1977 is sustained together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

JUL 17 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER