

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
J. Michael & Ellen Sills :
: 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 1969, 1970 and 1971

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. Michael & Ellen Sills, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Michael & Ellen Sills
126 Shady Lane
Fayetteville, NY 13066

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.

Cornelia A. Hagelland

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
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Personal Income Tax :
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for the Years 1969, 1970 and 1971 :
:

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 Carter H. Strickland 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. Carter H. Strickland
Mackenzie, Smith, Lewis, Michell & Hughes
600 Onondaga Savings Bank Bldg.
Syracuse, NY 13202

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.

Carrie A. Hageland

J. Vredenburg

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

April 3, 1981

J. Michael & Ellen Sills
126 Shady La.
Fayetteville, NY 13066

Dear Mr. & Mrs. Sills:

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
Carter H. Strickland
Mackenzie, Smith, Lewis, Michell & Hughes
600 Onondaga Savings Bank Bldg.
Syracuse, NY 13202
Taxing Bureau's Representative

NEW YORK STATE

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
J. MICHAEL SILLS and ELLEN SILLS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969, 1970 and 1971.	:	

Petitioners, J. Michael Sills and Ellen Sills, 126 Shady Lane, Fayetteville, New York 13066, 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 1969, 1970 and 1971 (File No. 24673).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 13, 1980 at 10:45 A.M. Petitioner J. Michael Sills appeared with Carter H. Strickland, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners' failure to file New York State income tax returns and pay the tax due for 1969 through 1971 was due to reasonable cause.

FINDINGS OF FACT

1. In January 1970, petitioner J. Michael Sills engaged one of the large nationwide certified public accounting firms to prepare his 1969 tax returns. Petitioners have always relied on accountants and attorneys to prepare their returns. From January 1970 to June 1972, petitioner J. Michael Sills made from five to ten office visits and had numerous telephone conversations with the

accountant assigned to him by this firm. Petitioners' returns were complex due to difficulties that arose because of stock received from petitioner J. Michael Sills' father's estate, his grandmother's estate and from two trusts. These estates and trusts were located in various parts of the country, including Chicago, Illinois; Harrisburg, Pennsylvania; and New York City.

Because of their accountant's lack of success in obtaining the necessary information to prepare the returns required, petitioners engaged a different certified public accountant in June of 1972. The new accountant was required to write twenty-eight different letters to the various trusts and estates before he finally received all the information in February, 1973 to prepare the returns. Two other letters were written by petitioner in which he stated that if the information the new accountant was seeking was not supplied the next request would be from petitioners' lawyer.

2. On March 19, 1973, petitioners filed their 1969 through 1971 tax returns on which they paid \$131.00, \$856.00 and \$7,121.00, respectively.

3. Petitioners were audited for 1969 through 1971 by Internal Revenue Service. Penalties were assessed and abated for all years other than 1969 with no explanation why they were not abated.

4. On September 26, 1974 the Income Tax Bureau issued a Statement of Audit Changes which incorporated the Federal audit adjustments found for 1970 and the computation of New York State minimum income tax for 1971. Petitioners paid the additional tax plus interest, but requested the penalties for failure to file and pay the taxes be abated.

5. The Audit Division refused to abate the penalties and on April 26, 1976 issued a Notice and Demand for payment of the penalties due in the amount of \$3,737.88, plus interest on penalties of \$112.14, for a total due of \$3,850.02. Petitioners paid the \$3,850.02 on February 3, 1977.

6. On April 12, 1978, petitioners filed a Claim for Credit or Refund of Personal Income tax in the amount of \$3,850.02. On April 14, 1978, the Audit Division issued a Notice of Disallowance in full without explanation.

7. At the time the second accountant took over the task of bringing petitioners' filing up-to-date in 1972, it did not appear to him that there would be any taxes due.

CONCLUSIONS OF LAW

A. That petitioners took every reasonable effort to file their tax returns for 1969 through 1971. That petitioners' failure to file New York State income tax returns on time was not due to dilatory tactics, but due to reasonable cause; therefore, penalties imposed pursuant to sections 685(a) (1) and 685(a) (2) of the Tax Law are cancelled.

B. That the petition of J. Michael Sills and Ellen Sills is granted and the Audit Division is hereby directed to refund \$3,850.02 paid by petitioners on February 3, 1977, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

APR 3 1981

STATE TAX COMMISSION

James W. Tully
PRESIDENT

Thomas D. Sp. C.
COMMISSIONER

Francis R. Koenig
COMMISSIONER