

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Victor L. & Lillian C. Wegard :
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 :
1968.

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Victor L. & Lillian C. Wegard, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

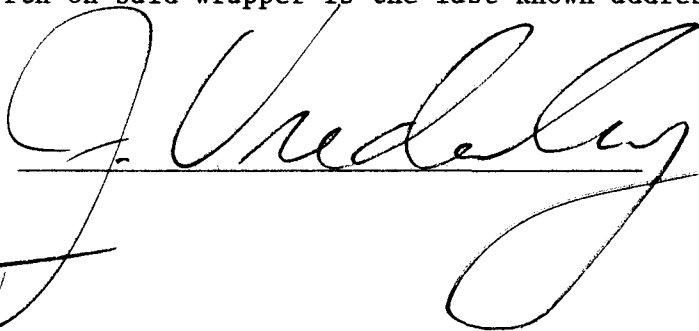
Victor L. & Lillian C. Wegard
1 Belmont Lane
Willingboro, NJ 08046

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
30th day of October, 1981.





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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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Solomon Fisher the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Solomon Fisher
Dilworth, Paxson, Kalish, Levy & Kaufman
123 S. Broad St. - 2600 The Fidelity Bldg.
Philadelphia, PA 19109

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
30th day of October, 1981.

James A. Highland

J. Vredenburg

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

October 30, 1981

Victor L. & Lillian C. Wegard
1 Belmont Lane
Willingboro, NJ 08046

Dear Mr. Wegard:

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
Solomon Fisher
Dilworth, Paxson, Kalish, Levy & Kaufman
123 S. Broad St. - 2600 The Fidelity Bldg.
Philadelphia, PA 19109
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
VICTOR L. WEGARD and LILLIAN C. WEGARD
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1968.

DECISION

Petitioners, Victor L. Wegard and Lillian C. Wegard, 1 Belmont Lane, Willingboro, New Jersey 08046, 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 1968 (File No. 13463).

A formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 11, 1977 at 2:55 P.M. Petitioners appeared by Dilworth, Paxson, Kalish, Levy & Kauffman (Solomon Fisher, Esq, of counsel). The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

I. Whether the issuance of the Notice of Deficiency for the year 1968 to petitioners on February 24, 1975 was timely.

II. Whether the amount of income tax claimed to be due for the year 1968 is correct.

FINDINGS OF FACT

1. On February 24, 1975, the Audit Division issued a Statement of Audit Changes against petitioners advising that section 637 of the Tax Law states that the adjusted gross income of a nonresident partner shall include his distributive share of all items of partnership income, gain, loss and deduction

entering into his Federal adjusted gross income to the extent such items are derived from or connected with New York State sources. Tax liability was recomputed for personal income tax. Accordingly, on said date, a Notice of Deficiency was issued in the amount of \$19,963.31, plus interest of \$7,016.50, for a total of \$26,979.81.

2. On May 5, 1969, the Department of Taxation and Finance, Income Tax Bureau, Albany, received the New York State Combined Income Tax Return for 1968 from Victor L. Wegard and Lillian C. Wegard. The tax form used was for nonresident married persons filing a joint Federal return who elect to file separate New York State returns.

3. The return reported the following:

	Joint Federal - Amounts	Separate New York State Amounts	
		Husband	Wife
Line 1 Total income	\$215,383	\$4,238	\$4,238
Line 5 Total New York income	215,383	4,238	4,238

SCHEDULE A

1. Wages, salaries, tips, ec.	8,245		
2. Dividends	1,531		
3. Interest income	5,407		
4. Pensions and annuities, rents and royalties, partnerships and estates or trusts	174,237	4,238	4,238
6. Sale or exchange of property	25,869		
8. Other sources misc.	94		
11. Total income	\$215,383	\$4,238	\$4,238

4. Petitioners' Federal return Part II and Schedule B, Supplemental Schedule of Income and Retirement Income Credit, was comprised as follows:

Victor Wegard - Commissions	\$161,671
Lillian Wegard - Salary	12,385
Victor Wegard - 1% profits share	4,238
Lillian Wegard - 1% profits share	4,238
	<u>\$180,532</u>
Less:	
Amounts from W-2's	4,625
Depreciation	<u>1,670</u>
Total	<u>\$174,237</u>

5. Petitioners were partners in Charles Plohn & Co. A timely New York State Partnership Income Tax Return for the year 1968 was filed. In addition to listing petitioners thereon and their social security numbers, it indicated their one percent (1%) respective distributive shares of profits, (share of ordinary income) of \$4,233.02 each, and salaries and interest income of \$161,670.93 and \$10,384.64 respectively.

CONCLUSIONS OF LAW

A. That section 683(a) of the Tax Law provides that:

"Except as otherwise provided in this section, any tax under this article shall be assessed within three years after the return was filed..."

Since petitioners' return due on April 15, 1969 was filed and received on May 5, 1969, the statutory assessment period expired May 5, 1972.

B. That section 683(d) of the Tax Law provides for a six year statute of limitations if:

"(1) an individual omits from his New York adjusted gross income...an amount properly includible therein which is in excess of twenty-five percent of the amount of New York adjusted gross income...stated in the return,...

For purposes of this subsection there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner

adequate to apprise the Tax Commission of the nature and amount of the item of income..."

Petitioners made adequate disclosure and fully reported their income as required on the tax return for 1968.

C. That section 658(c) provides:

"Partnership.-Every partnership having a resident partner or having any income derived from New York sources,...shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the tax commission may...prescribe."

The partnership return must be read, together with, or as an adjunct to the partner's personal return in order for it to have any value at all."

(Estate of Klein v. Commissioner, 537 F.2d 701 (2nd Cir. 1967)).

D. That since the Notice of Deficiency was not timely, the issue regarding the correctness of the income tax for the year 1968 is moot.

E. That the petition of Victor L. Wegard and Lillian C. Wegard is granted and the Notice of Deficiency issued on February 24, 1975 is cancelled.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER