

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John P. & Dora Coughlin : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income &
UBT under Article 22 & 23 of the Tax Law for the :
Years 1962, 1963 & 1968 - 1971.

State of New York
County of Albany

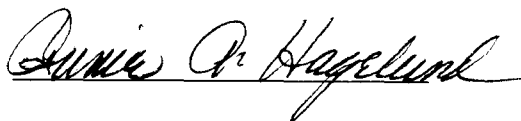
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of January, 1982, he served the within notice of Decision by certified mail upon John P. & Dora Coughlin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John P. & Dora Coughlin
18609 - 182nd N.E.
Woodinville, WA 98072

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
29th day of January, 1982.


Dennis P. Hagelund



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

John P. & Dora Coughlin : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income
& UBT under Article 22 & 23 of the Tax Law for the:
Years 1962, 1963 & 1968 - 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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Thomas P. Tortora the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas P. Tortora
Alfred H. Miller Co.
260 Plymouth Ave. S.
Rochester, NY 14608

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
29th day of January, 1982.

Ann A. Haglund

Jay Vredenburg

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

January 29, 1982

John P. & Dora Coughlin
18609 - 182nd N.E.
Woodinville, WA 98072

Dear Mr. & Mrs. Coughlin:

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 & 722 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
Thomas P. Tortora
Alfred H. Miller Co.
260 Plymouth Ave. S.
Rochester, NY 14608
Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 19, 1979 at 10:45 A.M. Petitioners appeared by Thomas P. Tortora, Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency issued by the Income Tax Bureau properly reflected petitioners' personal and unincorporated taxable income for the years 1962 and 1963.

II. Whether the income received by petitioner John P. Coughlin from his sales activities during the years at issue is subject to unincorporated business tax.

III. Whether the penalties asserted for the years at issue are correct.

IV. Whether the statute of limitations expired because the Income Tax Bureau allegedly failed to vigorously pursue the matter to an expeditious conclusion.

V. Whether petitioners are entitled to a decrease in taxable income for personal, as well as unincorporated business taxes, based on subsequent adjustments to Federal audit results for 1969 through 1971.

FINDINGS OF FACT

1. Petitioners, John P. Coughlin and Dora Coughlin filed 1968, 1969 and 1970 joint New York State income tax resident returns on April 22, 1970, May 12, 1971 and May 11, 1971, respectively. Returns for any of the other years in issue were not introduced into evidence.

2. On April 30, 1971, the Income Tax Bureau issued a letter stating that a search of the Bureau's files failed to disclose returns for 1959, 1960, 1962, 1963, 1964, 1966, 1967 and 1969; and if the petitioners had copies of the above returns available, to please submit them. The letter also requested information on petitioner John P. Coughlin's business activities as a salesman.

3. On May 12, 1971, a reply was received by the Income Tax Bureau to its inquiry of April 30, 1971. In this reply, petitioner John P. Coughlin stated that he could not find copies of his 1962 and 1963 New York State income tax returns. He also stated that he was not subject to any supervision by his principals and that he was an independent agent.

4. On January 24, 1972, a Federal audit determination was issued which increased petitioners' taxable income by \$3,150.39 and \$4,409.55 for 1969 and 1970, respectively. On January 24, 1973, a subsequent Federal audit determination was issued decreasing petitioners' previously adjusted taxable income by \$1,875.01 and \$2,067.25 for 1969 and 1970, respectively. Petitioners did

not file a Report of Change in Federal Taxable Income for New York State and unincorporated business tax purposes for 1969 and 1970.

5. On November 15, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, imposing additional personal income and unincorporated business taxes as follows:

- a) Since there was no indication personal income tax returns were filed for 1962 and 1963, the Income Tax Bureau estimated petitioners' New York adjusted gross income to be \$10,400.00 each year, based on petitioners' 1964 New York State resident return. The Bureau allowed the standard deduction of \$1,000.00, one exemption and statutory credit of \$10.00.
- b) Since there was no indication that unincorporated business tax returns were filed for 1962 and 1963, the Income Tax Bureau estimated petitioners' net profit to be \$10,400.00 each year, based on petitioners' New York adjusted gross income for 1964. The Bureau allowed twenty percent allowance for taxpayers' services and an exemption of \$5,000.00, but no business tax credit was allowed in the computation of the unincorporated business tax.
- c) Since no unincorporated business tax return was filed for 1968, the Income Tax Bureau started with the reported business income of \$26,050.92 shown on the New York State income tax return, and granted an allowance for taxpayers' services, an exemption and contributions of \$539.25.
- d) For 1969 and 1970, New York State income tax resident returns were corrected to reflect the Federal audit determination of January 24, 1972 but did not take into account the subsequent Federal audit determination of January 24, 1973.

- e) Since no unincorporated business tax return was filed for 1969, the Income Tax Bureau started with reported business income of \$29,612.17, increased it by the Federal audit determination of January 24, 1972, and then granted an allowance for taxpayers' services, an exemption and contributions of \$485.00. For 1970, the Income Tax Bureau added miscellaneous income (samples sold) of \$2,810.00 to the reported business income of \$29,241.05, and then increased it by the Federal audit determination of January 24, 1972. The Bureau then granted an allowance for taxpayers' services, an exemption and contributions of \$535.00. The Income Tax Bureau did not take into account the Federal audit determination of January 24, 1973 for either 1969 or 1970.
- f) Since there was no indication that a personal income tax return was filed for 1971, the Income Tax Bureau estimated petitioners' New York adjusted gross income to be \$38,000.00. This was based on petitioners' 1970 New York State resident return, plus the Federal audit determination for 1970 dated January 24, 1972. The Bureau allowed a standard deduction of \$1,500.00, three exemptions and a statutory credit of \$25.00.
- g) Since there was no indication that an unincorporated business tax return was filed for 1971, the Income Tax Bureau estimated petitioners' net profit to be \$38,000.00. The Bureau granted an allowance for taxpayers' services and an exemption.

Accordingly, a Notice of Deficiency was issued against petitioners on June 24, 1974 imposing personal income and unincorporated business taxes of \$10,466.87 , plus \$4,604.14 in penalties and \$2,352.82 in interest, for 1962, 1963 and 1968 through 1971.

6. Petitioners had three exemptions for personal income tax purposes for 1962 and 1963.

7. Petitioners had six exemptions for personal income tax purposes for 1971.

8. Petitioners had a Federal audit for 1971 which determined petitioners' Federal taxable income to be \$23,159.05. Based on this Federal audit, the net profit from the business was determined to be \$26,875.00.

9. Petitioner Dora Coughlin had income of \$3,801.00 for 1971, of which \$70.00 was withheld for New York State income tax.

10. The Internal Revenue Service determined negligence to be in evidence and imposed a 5 percent penalty under section 6653(a) of the Internal Revenue Code for 1970 and 1971.

11. The Income Tax Bureau determined negligence under section 685(b) of the Tax Law for all years at issue for both personal income and unincorporated business tax. The Income Tax Bureau also imposed penalties for failure to file tax returns and/or to pay taxes shown on returns. The penalty for failure to pay tax shown on return was also imposed by the Income Tax Bureau on the Federal audit determination adjustment of January 24, 1972. The penalty for failure to file a declaration or underpayment of estimated tax was also imposed.

12. During the years at issue, petitioner John P. Coughlin was a sales representative who sold clothing. Petitioner was free to represent as many principals as he chose. There was no arrangement between his principals as to the division of his time and effort. All expenses were paid by petitioner John P. Coughlin and reported on Federal Schedule C, (profit (or loss) from business or profession) for 1968 through 1971. Petitioner paid self-employment tax.

13. Petitioners contended that a State Tax Commission determination assessing additional tax may not be sustained unless there are facts which show it is not arbitrary or capricious, even though the petitioner has the burden of proof. Petitioner further contended that the assessments for 1962 and 1963 appear to be totally arbitrary. They argued that the length of time taken by the Income Tax Bureau to assess these taxes makes it impossible for them to prove the correct amounts of their income.

14. During 1972, petitioners' home was destroyed by fire. They contended that their tax records were also destroyed in the fire and argued that this circumstance should be taken into consideration.

15. Petitioners contended that the Income Tax Bureau did not actively pursue this matter; therefore, they argued that the statute of limitations had expired.

CONCLUSIONS OF LAW

A. That where the taxpayers' records have been destroyed, the Income Tax Bureau may reconstruct his income by other means. It does not matter that records were kept when the return was prepared but were subsequently lost or destroyed by accident or abandoned. Despite the fact that injustices may arise by estimating a taxpayer's income based on prior or subsequent tax returns, it must also be recognized that it is the Bureau's duty to determine the tax due and, in the absence of information providing the basis for a different method, it must be assumed correct.

That the Income Tax Bureau by estimating petitioners' income for 1962 and 1963 for both personal income tax and unincorporated business tax purposes based on tax returns filed for 1964 did not necessarily use the most proper audit techniques in reconstructing petitioners' income, however it was open to

petitioners to point out areas or specific instances in which the method used by the Bureau failed to reflect their true income. This petitioners did not do.

That the burden of proof to overcome the assessments rests on petitioners pursuant to section 689(e) of the Tax Law. If there are facts or reasonable inferences to be drawn from the record to support the determination it must be upheld; and therefore, it is not arbitrary or capricious (Ginzburg, 14 BTA 324; Hillman, Executrix v. State Tax Commission, 30 A.D. 2d 362; Miller v. Comm., 237 F 2d 830 and Young v. Bragaline, 3 N.Y. 2d 602).

B. That the income received by petitioner John P. Coughlin from the principals he represented during 1962, 1963 and 1968 through 1971 constituted income from his regular business of selling. The Income did not constitute compensation as an employee exempt from unincorporated business tax by virtue of section 703(b) of the Tax Law.

That the aforesaid activities of petitioner during the years at issue constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law; thus, the income therefrom is subject to unincorporated business tax imposed by section 701 of the Tax Law.

C. That the Income Tax Bureau was proper in asserting penalties pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law, since petitioners did not give a valid reason for either not filing returns and/or not filing returns and paying the amount shown due on them within the correct time restrictions. However, the penalty pursuant to 685(a)(2) of the Tax Law should have been calculated on the amounts shown as tax due on any return filed or the amount of tax required to be shown on a return, whichever was lower and not on the adjusted tax.

That the negligence penalty under section 685(b) of the Tax Law was properly assessed since petitioners failed to show they did not intentionally disregard the rules and regulations with respect to Article 22 of the Tax Law in their failure to file and/or failure to file and pay tax shown on the return on time.

That penalties asserted against petitioners for underpayment of personal income tax for years at issue were properly determined by the Income Tax Bureau, in accordance with the meaning and intent of section 685(c) of the Tax Law.

D. That a Notice of Deficiency may be issued at any time if no return is filed and/or if taxpayer fails to comply with section 659 of the Tax Law in not reporting changes in Federal taxable income, since there is no statute of limitations in these instances (sections 683 and 722 of the Tax Law). That there is no section of the Tax Law which sets limitations on processing time between the date of issuance of the Notice of Deficiency and the scheduling of a hearing by the State Tax Commission; therefore, the statute of limitations has not expired.

E. That the Income Tax Bureau is hereby directed to modify accordingly the Notice of Deficiency issued June 24, 1974 as follows:

- 1) Allow additional two exemptions and \$25.00 statutory credit for personal income taxes and a business tax credit for unincorporated business taxes for the years 1962 and 1963,
- 2) Decrease personal and unincorporated taxable income by \$1,875.01 and \$2,067.25 for 1969 and 1970, respectively, based on the Federal audit determination of January 24, 1973,

- 3) Recompute personal income tax for 1971 as married, filing separately, and, in accordance with Findings of Fact Nos. '7', '8' and '9', recompute unincorporated business tax for 1971 in accordance with Finding of Fact No. '8'.


F. That the petition of John P. Coughlin and Dora Coughlin is granted to the extent of reducing their New York State personal income tax and petitioner John P. Coughlin's unincorporated business tax in accordance with Conclusion of Law "E". The penalties are reduced in accordance with the reduction of taxes as indicated in Conclusion of Law "E", above, and the recalculation of penalty pursuant to section 685(a)(2) of the Tax Law in accordance with Conclusion of Law "C"; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency issued June 24, 1974 is sustained, together with such additional interest as may be lawfully owing.

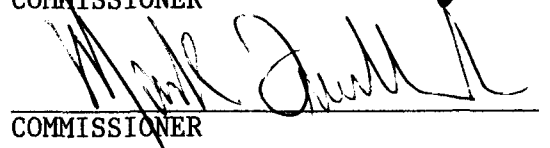
DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS
CLAIM CHECK NO. 12227
ALBANY, N. Y.

☐ HOLD

DATE

1ST NOTICE

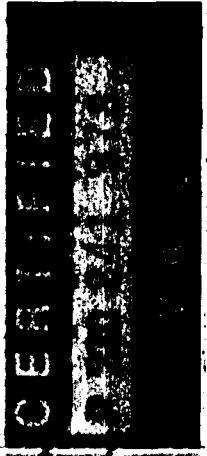
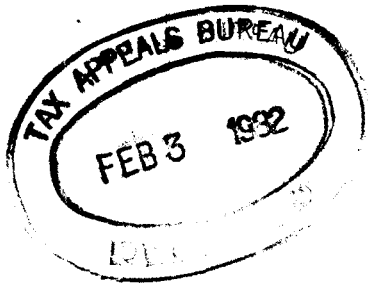
2ND NOTICE

RETURN

Detached from
PS Form 3500-A
July 1977



Thomas P. Tortora
Alfred H. Miller Co.
260 Plymouth Ave. S.
Rochester, NY 14608



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

January 29, 1982

John P. & Dora Coughlin
18609 - 182nd N.E.
Woodinville, WA 98072

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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
Thomas P. Tortora
Alfred H. Miller Co.
260 Plymouth Ave. S.
Rochester, NY 14608
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN P. COUGHLIN and DORA COUGHLIN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1962, 1963 and 1968 through :
1971.

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 19, 1979 at 10:45 A.M. Petitioners appeared by Thomas P. Tortora, Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

I. Whether the Notice of Deficiency issued by the Income Tax Bureau properly reflected petitioners' personal and unincorporated taxable income for the years 1962 and 1963.

II. Whether the income received by petitioner John P. Coughlin from his sales activities during the years at issue is subject to unincorporated business tax.

III. Whether the penalties asserted for the years at issue are correct.

IV. Whether the statute of limitations expired because the Income Tax Bureau allegedly failed to vigorously pursue the matter to an expeditious conclusion.

V. Whether petitioners are entitled to a decrease in taxable income for personal, as well as unincorporated business taxes, based on subsequent adjustments to Federal audit results for 1969 through 1971.

FINDINGS OF FACT

1. Petitioners, John P. Coughlin and Dora Coughlin filed 1968, 1969 and 1970 joint New York State income tax resident returns on April 22, 1970, May 12, 1971 and May 11, 1971, respectively. Returns for any of the other years in issue were not introduced into evidence.

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- c) Since no unincorporated business tax return was filed for 1968, the Income Tax Bureau started with the reported business income of \$26,050.92 shown on the New York State income tax return, and granted an allowance for taxpayers' services, an exemption and contributions of \$539.25.
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- e) Since no unincorporated business tax return was filed for 1969, the Income Tax Bureau started with reported business income of \$29,612.17, increased it by the Federal audit determination of January 24, 1972, and then granted an allowance for taxpayers' services, an exemption and contributions of \$485.00. For 1970, the Income Tax Bureau added miscellaneous income (samples sold) of \$2,810.00 to the reported business income of \$29,241.05, and then increased it by the Federal audit determination of January 24, 1972. The Bureau then granted an allowance for taxpayers' services, an exemption and contributions of \$535.00. The Income Tax Bureau did not take into account the Federal audit determination of January 24, 1973 for either 1969 or 1970.
- f) Since there was no indication that a personal income tax return was filed for 1971, the Income Tax Bureau estimated petitioners' New York adjusted gross income to be \$38,000.00. This was based on petitioners' 1970 New York State resident return, plus the Federal audit determination for 1970 dated January 24, 1972. The Bureau allowed a standard deduction of \$1,500.00, three exemptions and a statutory credit of \$25.00.
- g) Since there was no indication that an unincorporated business tax return was filed for 1971, the Income Tax Bureau estimated petitioners' net profit to be \$38,000.00. The Bureau granted an allowance for taxpayers' services and an exemption.

Accordingly, a Notice of Deficiency was issued against petitioners on June 24, 1974 imposing personal income and unincorporated business taxes of \$10,466.87 , plus \$4,604.14 in penalties and \$2,352.82 in interest, for 1962, 1963 and 1968 through 1971.

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10. The Internal Revenue Service determined negligence to be in evidence and imposed a 5 percent penalty under section 6653(a) of the Internal Revenue Code for 1970 and 1971.

11. The Income Tax Bureau determined negligence under section 685(b) of the Tax Law for all years at issue for both personal income and unincorporated business tax. The Income Tax Bureau also imposed penalties for failure to file tax returns and/or to pay taxes shown on returns. The penalty for failure to pay tax shown on return was also imposed by the Income Tax Bureau on the Federal audit determination adjustment of January 24, 1972. The penalty for failure to file a declaration or underpayment of estimated tax was also imposed.

12. During the years at issue, petitioner John P. Coughlin was a sales representative who sold clothing. Petitioner was free to represent as many principals as he chose. There was no arrangement between his principals as to the division of his time and effort. All expenses were paid by petitioner John P. Coughlin and reported on Federal Schedule C, (profit (or loss) from business or profession) for 1968 through 1971. Petitioner paid self-employment tax.

13. Petitioners contended that a State Tax Commission determination assessing additional tax may not be sustained unless there are facts which show it is not arbitrary or capricious, even though the petitioner has the burden of proof. Petitioner further contended that the assessments for 1962 and 1963 appear to be totally arbitrary. They argued that the length of time taken by the Income Tax Bureau to assess these taxes makes it impossible for them to prove the correct amounts of their income.

14. During 1972, petitioners' home was destroyed by fire. They contended that their tax records were also destroyed in the fire and argued that this circumstance should be taken into consideration.

15. Petitioners contended that the Income Tax Bureau did not actively pursue this matter; therefore, they argued that the statute of limitations had expired.

CONCLUSIONS OF LAW

A. That where the taxpayers' records have been destroyed, the Income Tax Bureau may reconstruct his income by other means. It does not matter that records were kept when the return was prepared but were subsequently lost or destroyed by accident or abandoned. Despite the fact that injustices may arise by estimating a taxpayer's income based on prior or subsequent tax returns, it must also be recognized that it is the Bureau's duty to determine the tax due and, in the absence of information providing the basis for a different method, it must be assumed correct.

That the Income Tax Bureau by estimating petitioners' income for 1962 and 1963 for both personal income tax and unincorporated business tax purposes based on tax returns filed for 1964 did not necessarily use the most proper audit techniques in reconstructing petitioners' income, however it was open to

petitioners to point out areas or specific instances in which the method used by the Bureau failed to reflect their true income. This petitioners did not do.

That the burden of proof to overcome the assessments rests on petitioners pursuant to section 689(e) of the Tax Law. If there are facts or reasonable inferences to be drawn from the record to support the determination it must be upheld; and therefore, it is not arbitrary or capricious (Ginzburg, 14 BTA 324; Hillman, Executrix v. State Tax Commission, 30 A.D. 2d 362; Miller v. Comm., 237 F 2d 830 and Young v. Bragaline, 3 N.Y. 2d 602).

B. That the income received by petitioner John P. Coughlin from the principals he represented during 1962, 1963 and 1968 through 1971 constituted income from his regular business of selling. The Income did not constitute compensation as an employee exempt from unincorporated business tax by virtue of section 703(b) of the Tax Law.

That the aforesaid activities of petitioner during the years at issue constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law; thus, the income therefrom is subject to unincorporated business tax imposed by section 701 of the Tax Law.

C. That the Income Tax Bureau was proper in asserting penalties pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law, since petitioners did not give a valid reason for either not filing returns and/or not filing returns and paying the amount shown due on them within the correct time restrictions. However, the penalty pursuant to 685(a)(2) of the Tax Law should have been calculated on the amounts shown as tax due on any return filed or the amount of tax required to be shown on a return, whichever was lower and not on the adjusted tax.

That the negligence penalty under section 685(b) of the Tax Law was properly assessed since petitioners failed to show they did not intentionally disregard the rules and regulations with respect to Article 22 of the Tax Law in their failure to file and/or failure to file and pay tax shown on the return on time.

That penalties asserted against petitioners for underpayment of personal income tax for years at issue were properly determined by the Income Tax Bureau, in accordance with the meaning and intent of section 685(c) of the Tax Law.

D. That a Notice of Deficiency may be issued at any time if no return is filed and/or if taxpayer fails to comply with section 659 of the Tax Law in not reporting changes in Federal taxable income, since there is no statute of limitations in these instances (sections 683 and 722 of the Tax Law). That there is no section of the Tax Law which sets limitations on processing time between the date of issuance of the Notice of Deficiency and the scheduling of a hearing by the State Tax Commission; therefore, the statute of limitations has not expired.

E. That the Income Tax Bureau is hereby directed to modify accordingly the Notice of Deficiency issued June 24, 1974 as follows:

- 1) Allow additional two exemptions and \$25.00 statutory credit for personal income taxes and a business tax credit for unincorporated business taxes for the years 1962 and 1963,
- 2) Decrease personal and unincorporated taxable income by \$1,875.01 and \$2,067.25 for 1969 and 1970, respectively, based on the Federal audit determination of January 24, 1973,

- 3) Recompute personal income tax for 1971 as married, filing separately, and, in accordance with Findings of Fact Nos. '7', '8' and '9', recompute unincorporated business tax for 1971 in accordance with Finding of Fact No. '8'.

F. That the petition of John P. Coughlin and Dora Coughlin is granted to the extent of reducing their New York State personal income tax and petitioner John P. Coughlin's unincorporated business tax in accordance with Conclusion of Law "E". The penalties are reduced in accordance with the reduction of taxes as indicated in Conclusion of Law "E", above, and the recalculation of penalty pursuant to section 685(a)(2) of the Tax Law in accordance with Conclusion of Law "C"; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency issued June 24, 1974 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER