

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Nat & Betty Drucker :
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 :
1973. :
_____:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Nat & Betty Drucker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nat & Betty Drucker
6804 N.W. 76th Ct.
Tamarac, FL 33319

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
9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Nat & Betty Drucker :
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 :
1973 :
_____:

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Leo G. Hacker the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leo G. Hacker
8581 W. McNab Rd.
Tamarac, FL 33321

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
9th day of April, 1982.

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

April 9, 1982

Nat & Betty Drucker
6804 N.W. 76th Ct.
Tamarac, FL 33319

Dear Mr. & Mrs. Drucker:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Leo G. Hacker
8581 W. McNab Rd.
Tamarac, FL 33321
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| NAT and BETTY DRUCKER | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1973. | : | |

Petitioners, Nat and Betty Drucker, 6804 N.W. 76th Court, Tamarac, Florida 33319, 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 1973 (File No. 21130).

On February 4, 1981, in their perfected petition, and again on May 12, 1981, the petitioners, by Leo G. Hacker, CPA, advised the State Tax Commission that they desired to submit the case for determination on the entire record contained in the file without a hearing.

ISSUE

Whether the petitioners had reasonable cause for failing to timely file a New York State Nonresident Personal Income Tax Return for the year 1973.

FINDINGS OF FACT

1. Petitioners, Nat and Betty Drucker, residents and domiciliaries of the State of Florida, filed their United States individual income tax return (Form 1040) for the year 1973. On or about December 24, 1975 petitioners' 1040 for said year 1973 was audited by the Internal Revenue Service as a result of which the petitioners' income for the year 1973 was changed (increased) and they were required to pay an additional tax to the Internal Revenue Service.

2. Petitioners failed to file their New York State Income Tax Return for the year 1973 until sometime subsequent to December 24, 1975 and when filed, said return failed to include interest income in the sum of \$11,608.71 attributable to New York sources as mortgage interest income arising from the sale of New York property.

3. On October 31, 1977 the Audit Division issued a Statement of Audit Changes to petitioners asserting personal income tax due for the year 1973 in the sum of \$4,737.65, plus interest in the sum of \$1,259.69 and penalty in the sum of \$2,084.56, for a total due in the aggregate sum of \$8,081.90. On that same day, October 31, 1977, a Notice of Deficiency was issued against the petitioners.

4. Petitioners, in their perfected petition allege, in substance, that if their former accountant, Herbert Hersh (since deceased) "did not file returns on time (or) made misrepresentations to the New York State Income Tax Bureau, all without the knowledge of Mr. & Mrs. Drucker (petitioners)" they, the petitioners, should not be required to pay the penalty imposed herein. However, the petitioners do not deny owing the sum of \$4,737.65 asserted to be due and owing as income tax for the year 1973.

CONCLUSIONS OF LAW

A. That petitioners failed to timely file their personal income tax return for the year 1973.

B. That petitioners have failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, to establish that their failure to file their personal income tax return for the year 1973 was due to reasonable cause and not due to willful neglect (section 685(a)(1) and (a)(2) of the Tax Law).

C. That the petition of Nat and Betty Drucker is denied and the Notice of Deficiency dated October 31, 1977 is sustained, together with such additional interest and penalty which is lawfully owing.

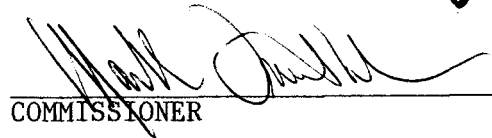
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER